

# HEARING ON THE ASSAULT WEAPONS BAN OF 2013

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

---

February 27, 2013

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**Serial No. J-113-5**

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Printed for the use of the Committee on the Judiciary



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## THE ASSAULT WEAPONS BAN OF 2013

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WEDNESDAY, FEBRUARY 27, 2013

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:06 a.m., in Room SH-216, Hart Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Blumenthal, Grassley, Graham, Cornyn, Lee, and Cruz.

### OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I am going to call this hearing to order, and I want to begin by welcoming our witnesses and also people who are interested in this subject who have taken the time to be here. It is very much appreciated.

The process will be this: I will make a statement. The distinguished Ranking Member, Senator Grassley, will make a statement. We will then go to our first two governmental witnesses and, secondly, the second panel.

We will ask witnesses to confine their remarks as much as they can to 5 minutes or so, and on the Committee we will follow the early-bird rule, which is first come, we will call on them first to ask questions afterwards in 5-minute rounds. So I will begin with my statement.

On December 14th, 20 sets of parents received a call no parent ever wants to receive: that they would never see their son or daughter again. Earlier that day, a deranged killer, wielding an assault weapon and armed with a high-capacity ammunition magazine, shot his way into Sandy Hook Elementary School in Newtown and unleashed a rapid hail of bullets, killing 20 young children, mostly 6-year-olds, and six brave administrators in just a handful of minutes that it took for law enforcement to respond to the scene. That horrific event shocked our Nation to its roots, and the pictures of these little victims brought tears to the eyes of millions of Americans.

We are holding today's hearing because the massacre in Newtown was, sadly, not an anomaly. From the 1966 shooting rampage at the University of Texas to the Newtown massacre, we have witnessed an increasing number of these mass killings. Since 1982, there have been at least 62 mass shootings across the United States, and they have been accelerating in recent years. Twenty-

five of these shootings have occurred since 2006, and seven took place in 2012.

The one common threat running through these mass shootings in recent years, from Aurora, Colorado, to Tucson, Arizona, to Blacksburg, Virginia, is that the gunmen used a military-style, semiautomatic assault weapon or a large-capacity ammunition magazine to commit unspeakable terror.

We have with us today victims of the shootings in Newtown, Aurora, and Virginia Tech. Would all the victims of gun violence in this room please stand for a brief moment?

Thank you very much. We appreciate it.

We will also have with us law enforcement officers from around the country who have traveled here to support our efforts to ban these military-style assault weapons, including the chiefs of police of Tempe, Arizona; North Ridge, California; Vail, Colorado; Athens-Clarke County, Georgia; Algonquin, Illinois; Wesley, Massachusetts; Baltimore County, Maryland; Norman and Spencer in Oklahoma; Tualatin, Oregon; Waverly, Pennsylvania; Petersburg, Virginia; the universities of Central Florida, of Washington, of Wisconsin-Madison, and of Dickinson and McDaniel Colleges; and the leaders of the State police in New York and Rhode Island.

Would these and other law enforcement officers here today please stand and be recognized?

Thank you very much.

We cannot allow the carnage I have described to continue without taking action on what is a serious matter of public policy, and that is why I have joined with many of my colleagues, some on this Committee—Senators Schumer, Durbin, Whitehouse, Klobuchar, Franken, Blumenthal, and Hirono, as well as many others off the Committee—to introduce legislation to prohibit the sale, transfer, manufacture, and importation of assault weapons and high-capacity magazines.

As the Members of this Committee know, we enacted a ban on assault weapons and high-capacity magazines, which I authored in the Senate and Senator Schumer sponsored in the House, in 1994. Unfortunately, that law had a 10-year sunset, and Congress failed to renew it when it expired in 2004.

Since the ban expired, over 350 people have been killed with assault weapons. Over 450 have been wounded. And the weapons are even more lethal today than they were in 2004. Let me give you an example, and you can watch this on the screen.

You can buy what is called a “bump fire stock” legally, which you insert into an AR-15 or other assault rifles. This, as I said, is legal. It is not cosmetic, and it allows a semiautomatic firearm to be fired as quickly as a fully automatic shotgun—excuse me, machine gun, which has been banned for decades. I would like to quickly show this weapon firing, with the slide in it.

[Video playing.]

Senator FEINSTEIN. You see this bump fire slide working as it mimics a fully automatic weapon. So it has got the versatility of low fire rates plus those very high fire rates. And that is legal today.

Since the Newtown massacre, several States, including California—how long is it? That is it?

Since the Newtown massacre, several States, including California, Delaware, Maryland, and New York, have shown leadership in moving to ban assault weapons or strengthen existing bans. Even so, the need for a Federal ban has never been greater.

For instance, California law enforcement tells me that our State's assault weapons ban has been effective in reducing the availability of these deadly weapons. But some criminals continue to acquire the guns from neighboring States, like Arizona, where they are unregulated. And as Senator Durbin stated at the last hearing, and I quote, "In the last 20 years, 9 percent of the crime guns in the city of Chicago could be traced to the State of Mississippi." It is clear that we need a national solution.

Let me describe briefly the key features of this new legislation, the Assault Weapons Ban of 2013. The bill bans the sale, transfer, importation, and manufacture of 157 specifically named semiautomatic assault weapons. It bans any other assault weapon which is defined as semiautomatic, that can accept a detachable magazine, and has one military characteristic, such as a pistol grip, barrel shroud, or folding stock. These features were developed for military weapons to make them more effective and efficient at killing people in close combat situations.

The bill prohibits large-capacity ammunition feeding devices capable of accepting more than ten rounds. This is a crucial part of this legislation. These large magazines and drums make a gun especially dangerous because they allow a shooter to fire 15, 30, even 100 rounds or more without having to pause to reload.

In many instances, like the tragic shooting of our colleague, Congresswoman Gabby Giffords, in Tucson, Arizona, it is only when the shooter has to change magazines that police or others have the chance to take that shooter down.

The bill also protects the rights of legitimate gun owners. It will not affect hunting or sporting firearms. Instead, the bill protects legitimate hunters by specifically excluding over 2,000 specifically named by make and model firearms used for hunting or sporting purposes.

Second, the bill will not take away any weapons that anybody owns today. Anyone who says otherwise is simply trying to deceive you. Instead, the bill grandfathers weapons legally possessed on the date of enactment.

Finally, while the bill permits the continued possession of high-capacity ammunition magazines that are legally possessed at the day of enactment, it would ban the future sale or transfer of these magazines, including the manufacture, importation, or possession.

Let me address for a moment the charge that assault weapons bans such as this are unconstitutional. The original Federal assault weapons ban was challenged repeatedly in Federal court on every grounds the opponents could come up with, including the Second Amendment, the Ninth Amendment, the Commerce Clause, the Due Process Clause, Equal Protection, and being a bill of attainder. Each and every time these challenges were rejected and the ban was upheld, including by the Fourth, Sixth, Ninth, and D.C. Circuits.

As we all know, the Supreme Court subsequently recognized the individual right to gun ownership in *District of Columbia v. Heller*.

However, that decision clearly stated, and I quote, “The right secured by the Second Amendment is not unlimited.” Justice Scalia, the author of that opinion, wrote that, “Dangerous and unusual weapons could be prohibited.”

Following *Heller*, State assault weapons bans in California and the District of Columbia have been upheld as consistent with the Second Amendment in *People v. James* and *Heller v. District of Columbia*, known as “Heller II.”

The Assault Weapons Ban of 2013 has received the endorsement of major law enforcement organizations, including the International Association of Chiefs of Police and the Major Cities Chiefs of Police. I am also very pleased that this legislation is endorsed by the Conference of Mayors, Mayors for Gun Control, and religious, governmental, civic, and other groups of officials. So, without objection, I will place the list of endorsements into the record.

[The information appears as submissions for the record.]

Senator FEINSTEIN. I now yield to the distinguished Ranking Member, Senator Grassley, for his opening remarks.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. I ask the Committee’s approval of one insert I will have during my remarks.

Senator FEINSTEIN. So ordered.

Senator GRASSLEY. Madam Chairwoman, thank you for holding today’s hearing. The tragedy at Newtown has caused all of us to ask what has happened in our society to bring about that tragedy and a lot of other like tragedies.

We are all shocked and horrified by the murder of innocent children, and we obviously sympathize with the victims and their families. And for one of our witnesses today, Mr. Heslin, I want to express my personal deep sympathy for your loss and that of your neighbors and the sharing of pain.

We do not want anything like this to happen again. We are determined to take effective constitutional action to prevent future catastrophes. And we can make the world safer—safer for people on the streets, safer for children in schools.

Society in recent decades has become less civil. Violent video games have encouraged the killing of innocent people for sport. These ought to be of deep concern.

Mental health services are not always up to par. Some States are not adequately supplying records of prohibited persons to the FBI instant check system.

We have heard testimony that the records of hundreds of thousands of mentally ill people in Arizona, people who are not legally allowed to own weapons, have not been provided for inclusion in that database.

A search of an incomplete database that fails to conform to existing law does not provide all the safety that the American people have a right to expect. Existing prohibitions on gun possessions are not enforced as much as they should be. So there is much that can be done to enhance safety now that is not being done.

I respect Senator Feinstein’s views on this issue. I know that your views are very sincere, and the interest that you have in ban-



ning assault weapons is a very consistent position you have taken over the last 20 years.

I happen to have a different view. S. 150 bans guns based solely on their appearance. Some of those cosmetic features are useful for self-defense. Others have nothing to do with the functioning of the weapons. As a result, the bill would ban some guns that are less powerful, dangerous, and that inflict less severe wounds than others that are exempt.

Such arbitrary distinctions and the fact that these weapons are commonly used for self-defense raise constitutional questions under the Second Amendment. The same questions of self-defense arise concerning magazines that enable firing more than 10 rounds.

There are occasions when people think Congress should pass a new law. The idea is a particular fix has not been tried before, and supporters might think that they have a solution to a problem.

This is not the case with the assault weapons ban. Congress passed such a law in 1994. It was on the books for 10 years. At the end of those 10 years, in 2004, University of Pennsylvania researchers under contract to the Justice Department's National Institute of Justice concluded that they "cannot clearly credit the ban with any of the Nation's recent drop in gun violence."

A study of the Centers for Disease Control and the National Research Council also could not demonstrate the effectiveness of the ban.

And just last month, the Deputy Director of the National Institute of Justice wrote that, "A complete elimination of assault weapons would not have a large impact on gun homicides."

By the way, this same National Institute of Justice official wrote in the same document that because theft and straw purchasers are the largest source of crime guns, universal background checks would likely shift offenders even more to theft and straw purchases. And he concluded that an effective universal background check system depends on "requiring gun registration."

The assault weapons ban did not prevent the earlier school shooting at Columbine, and I am going to put in the record, as I just indicated, an article by Officer Rob Young, "The Fallacy of Gun-Free School Zones." Officer Young as a child survived a school shooting in Stockton, California, in which five young students were shot and 26 were injured. He sets out in this article his reasoning for opposing gun bans as a victim himself.

[The article appears as a submission for the record.]

Senator GRASSLEY. When something has been tried and found not to work, we should try different approaches rather than re-enacting that which has not done the job.

There are vast numbers of gun control laws in our country. Criminals do not obey them, but law-abiding citizens do. That tilts the scale in favor of criminals who use guns. If gun control laws were effective in reducing crime, they would have produced lower crime rates by now.

We should be skeptical about giving the Justice Department more gun laws to enforce when the Department is poorly enforcing existing laws. The Department's own data show that under the Obama administration, Federal weapons prosecutions have fallen to the lowest level in over a decade. In fact, the U.S. Attorney's Of-

fice for the Northern District of Illinois brought among the lowest level of firearms prosecutions despite the surge of gun crimes in Chicago. Only 25 Federal firearms cases were brought to that office in 2011.

Nationally, only 1 percent of the people, 62 out of 4,732, who were denied guns based on background checks were prosecuted for illegally attempting to acquire firearms. That is much too low of a rate.

So let us see what can be done and accomplished by enforcing laws on the books before adding new ones of questionable effectiveness. We will legislate in this area, but I think we are going to legislate in an area that deals with the issue of reporting to the database people that are not in there now and by straw purchasing and trafficking in firearms and to make sure that we deal with the mental health issues that are involved with these tragedies that we are talking about today, and a lot of other tragedies that have happened.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator. I appreciate it.

Would the witnesses please stand? If you would affirm the oath as I complete its reading. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WALSH. I do.

Chief FLYNN. I do.

Senator FEINSTEIN. Thank you very much. I will introduce the two witnesses on this panel.

The first is United States Attorney John Walsh. He has served as United States Attorney for Colorado since August of 2010 after he was unanimously confirmed by the Senate. As United States Attorney, he was responsible for supervising and coordinating the Federal investigation of the mass shooting at a movie theater in Aurora, Colorado. Since becoming U.S. Attorney, Mr. Walsh was—before becoming United States Attorney, Mr. Walsh was a member of the law firm Hill and Robbins and a partner in the law firm Holland and Hart. Earlier in his career, he served as chief of the Major Frauds Section of the United States Attorney's Office in Los Angeles, supervising 35 Assistant U.S. Attorneys prosecuting white-collar offenses.

I will also introduce at this time Chief Edward Flynn. Chief Flynn has a long career of leadership in public safety. He has been the chief of the Milwaukee Police Department since 2008 where he commands an agency of 2,000 sworn officers and 700 civilians. Previously, he served as Secretary of Public Safety in Massachusetts under Governor Mitt Romney, overseeing the Massachusetts State Police, the Department of Corrections, and Massachusetts Emergency Management Agency. He has also served as chief of police in Springfield, Braintree, and Chelsea, Massachusetts, and in Arlington, Virginia. Flynn is a member of the Police Executive Research Forum, serves on the executive committee of the International Association of Chiefs of Police, and is a member of Harvard Kennedy School Executive Session on Policing, among other positions.

If the two of you will go ahead, please, and the degree to which you can keep the remarks to 5 minutes so there is an opportunity for questioning would be appreciated.

Could you activate your mic? There is a button right there, and pull it up as close as you can.

**STATEMENT OF JOHN F. WALSH, U.S. ATTORNEY, DISTRICT OF COLORADO, U.S. DEPARTMENT OF JUSTICE, DENVER, COLORADO**

Mr. WALSH. Thank you. Thank you.

Madam Chairman, Members of the Judiciary Committee, it is a privilege to present the views of the Department of Justice on the need to protect the American public by limiting access to dangerous military-style assault weapons and high-capacity magazines.

Reasonable limitations on these weapons are supported by a majority of Americans, and now more than ever. Although the Department does not yet have a position on any particular legislative proposal in this area, we are confident that the ban can be implemented in a way that protects the public without interfering with the constitutional rights of law-abiding American citizens.

On behalf of the Department of Justice, I want to thank you, Senator Feinstein, for your tireless efforts over the years to enact legislation to address the plague of gun violence in our country.

Now, Colorado has a history steeped in frontier traditions of gun ownership and respect for the Second Amendment. But at the same time, Coloradans have witnessed gun tragedies on a scale that frankly we could never have imagined. Coloradans have been profoundly shaken by the senseless mass shootings at Columbine in 1999 and the most recent Aurora theater shooting in 2012, as well as the chilling events in Tucson, Newtown, and in other communities all around the United States. These events remind us that individuals who are intent on inflicting mass casualties have ready access to the tools that they need to inflict maximum damage in a matter of moments, even seconds.

Military-style assault weapons and high-capacity magazines that hold 20, 30, or, in the case of the Aurora shooting, 100 rounds of ammunition are both lawful at the Federal level and widely available. These weapons are not necessary for sporting or self-defense purposes and are properly subject to regulation, reasonable regulation, under the Second Amendment.

As a long-time Federal prosecutor and now sitting U.S. Attorney, I share the view of most law enforcement professionals that shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. Of course, it has to be coupled with other sensible measures as well: continued aggressive enforcement of the existing firearms laws, new laws to prohibit particularly firearms trafficking, and to require universal background checks on private firearms transfers, and enhanced background checks to identify people who are properly prohibited from possessing weapons, such as people with mental illnesses or those with felony or domestic violence convictions.

The types of weapons that the Department believes should be banned include firearms that were originally designed to be military implements, crafted to be as effective as possible in killing

human beings. The power, rate of fire, and the efficiency of these firearms is the reason that they have become weapons of choice for mass shooters, criminal gangs, and drug-trafficking organizations.

We also must eliminate or limit the ability of shooters to inflict massive numbers of fatalities in a matter of minutes through the use of high-capacity magazines that can hold more than 10 rounds. A high-capacity magazine can turn any weapon into a tool of mass violence, even a handgun. In fact, the mass shootings at Virginia Tech; at Tucson, Arizona; Oak Creek, Wisconsin; and at Fort Hood, Texas, all involved handguns using magazines with more than 10 rounds.

High-capacity magazines are not required for defending one's home. They are not required for hunting or sport shooting. Their purpose is to enable shooters to inflict maximum damage on human beings. Frankly, forcing such a person to stop and reload can save lives, as was the case in Tucson, Arizona, when a 30-round magazine ran out and the shooter had to reload, whereupon he was tackled.

As the United States Attorney for Colorado, I go to bed every night in these months since July 2012 wondering whether I will be awakened by another pre-dawn call like the one I received on July 20th of last year, which notified me of the horrifying mass shooting in Aurora; or whether I will receive calls like those I have since received from other U.S. Attorneys around the country confronting the same sort of horror in their own home State.

I am proud to serve as the United States Attorney for Colorado, the State I grew up in. Colorado is a State that proudly honors American traditions, very much including the ownership and use of firearms as guaranteed by the Second Amendment of the Constitution. I share those values. But I also share the view of most law enforcement professionals and ordinary Americans that reasonable proposals to restrict the manufacture, importation, and sale of military-style assault weapons and high-capacity magazines are needed to protect the American people.

I urge this Committee to act. Thank you very much.

[The prepared statement of Mr. Walsh appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Mr. Walsh.

Chief Flynn.

**STATEMENT OF EDWARD A. FLYNN, CHIEF, MILWAUKEE  
POLICE DEPARTMENT, MILWAUKEE, WISCONSIN**

Chief FLYNN. Members of this Committee, thank you very much for the opportunity to testify to you today.

The Police Executive Research Forum, the International Association of Chiefs of Police, and the Major Cities Chiefs Association all have legislative proposals regarding firearms violence generally and assault weapons specifically. As an active member of each of these organizations, I support the collective wisdom of the chief law enforcement executives in the country.

I have been a police officer for over 40 years, starting as a patrolman in Jersey City. I have had the opportunity to lead law enforcement agencies in three States for the past 25 years. Among the most difficult challenges I continue to face is the firearms violence

that occurs in our neighborhoods, exacerbated by the use of high-capacity magazines and assault weapons.

Assault weapons are not built for sportsmen. Assault weapons are built to inflict violence against humans. Their military characteristics are not simply cosmetic in nature. These weapons are designed for combat. They are designed to quickly, easily, and efficiently cause lethal wounds to human beings.

In 2012, Milwaukee police officers investigated 435 non-fatal shootings. We confirmed that rifles were used in 185 crimes in the last year. And since 2010, we have recovered 159 assault rifles from the streets of Milwaukee.

In 2011, firearms were the number one cause of death for police officers killed in the line of duty. In less than 3 years, seven of my officers were shot with assault rifles and/or semiautomatic pistols. In addition to law enforcement officers, numerous innocent Milwaukee citizens were injured or killed by assault weapons and high-capacity firearms.

While the mass murders we hear about are horrifying enough, we must recognize that our Nation's cities are enduring a slow-motion mass murder every single year.

On July 4, 2008, in the city of Milwaukee, three suspects fired from gangways into a crowd of 100 people. Two of the suspects fired 27 shots from high-caliber assault rifles, leaving four innocent people dead in the street.

On July 7, 2010, a 12-year-old child was playing in front of her house when a mass gunman approached and fired ten shots from a semiautomatic pistol at the residence, striking the child three times.

And on New Year's Eve, just a few weeks ago, criminals fired five high-caliber rounds into a duplex. The rounds penetrated interior walls, furniture, and a 7-year-old child. Five children between the ages of 3 months and 9 years were in the building.

The notion that innocent, law-abiding citizens will use an assault weapon or high-capacity firearm to protect themselves is not our experience. We know that the victims and suspects in homicides in Milwaukee are typically career criminals. Ninety-seven percent of our suspects and 82 percent of our victims have criminal histories. Furthermore, our experience indicates that the vast majority of our home invasion victims are drug dealers. They do not need semiautomatic rifles to protect themselves.

Now, the Second Amendment, like every constitutional right, is subject to reasonable restrictions and regulation. In 2008, the Supreme Court rules the Second Amendment protects an individual's right to possess a firearm, but noted that, like most rights, the right secured by the Second Amendment is not unlimited.

Now, our system of rights is designed to protect and preserve individual rights and the rights of communities. This is not an impossible feat. These are not mutually exclusive rights. We have an obligation to protect both.

This bill does not take guns out of the hands of Americans. It does not strip Americans of their Second Amendment rights. In fact, if we want to be intellectually honest, the issues raised here have more to do with commerce than they do with the Second Amendment.

A lot of people make a lot of money selling firearms and ammunition. Now, this is not inherently a bad thing, but it can tempt us to search for and grasp onto false logic.

The bill being discussed here today places reasonable restrictions on future sales of certain types of firearms and magazines. It recognizes the distinction between hunting rifles and assault weapons. It allows for the sale or transfer of grandfathered weapons after a common-sense background check is completed. It promotes public safety. It protects the Second Amendment. It prevents the preventable.

It is time for Congress to pick a side. This time I hope it is law enforcement's.

[The prepared statement of Chief Flynn appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Chief.

For questions, I will have one question and then move on, and this question is on Columbine, and I would like to ask it of the United States Attorney present here today.

Two students were murdered, Mr. Walsh, as you know—excuse me. Two students murdered 13 people and injured 21. The gunmen used a TEC-9 assault pistol and several large-capacity magazines, all of which would be banned by this legislation.

The National Rifle Association has said the solution is to have armed security guards at every school. As you may know, there were two armed deputy sheriffs at Columbine. Did they succeed in stopping the tragedy? Did they try? And what happened?

Mr. WALSH. Senator, with respect to Columbine, if I may, obviously the armed guards who were present that day were not able to prevent the terrible tragedy that took place. I would note that the President's proposal, his package of important gun control and gun violence control initiatives, does include a portion that gives local school boards the option, and hopefully the funding, to have community resource officers present in the schools. That is something that individual schools may choose.

However, I think it is fair to say that our experience has been that the presence of armed guards in schools is not sufficient to prevent the kind of horrors that we have seen particularly in the last year.

Senator FEINSTEIN. Thank you.

Chief, would you comment on that as well, please?

Chief FLYNN. Well, I think certainly having armed security present in any environment offers the potential for protection. But there are no guarantees, and the great challenge certainly for cities like Milwaukee—we are the fourth poorest city in the country. We have a hard enough time keeping the police department at the strength it is in. I do not know who is going to pay for all of these armed guards. You know, perhaps somebody will come up with a grant program to do it. But it is an extraordinary cost, and it is no guarantee.

The fact of the matter is I have got officers out on the streets of that city every day trying to prevent violence. If they are around the wrong corner, it can break out. If they are distracted or doing something else, it can break out. If I have got an armed guard in a school breaking up a fistfight between two sophomores, he may

not be at his post. Certainly, you know, every piece of security we engage in can be helpful, but it is foolish to think that only security is what we need.

The great challenge here is can we prevent these tragedies. Having an armed guard is a way of fighting off a potential assault. But it is not an act of prevention. An act of prevention is making it difficult for people to outgun the police. An act of prevention is making it difficult for people to take military-style assault weapons into schools. That should not be easy. It is too easy now. All right? Any amount of armed guards in that school still might be, you know, outgunned by a committed offender armed with an assault rifle.

So, you know, there is no single solution to any complicated problem. Security is part of a solution. But if we ignore doing something about the weapons and implements that enable people to slaughter folks 20 at a time, then we are not dealing with the root of the problem.

Senator FEINSTEIN. Thank you, Chief.

Senator GRASSLEY.

Senator GRASSLEY. Thank you very much, each of you, for your testimony. I am going to start with Mr. Walsh.

The last U.S. Attorney to testify before the Constitution Subcommittee, Mr. Heaphy, stated that the Department supported assault weapon legislation “and will work hard to ensure that whatever comes out, if one comes out, is unconstitutional.”

The Committee is set to mark up a bill tomorrow. What has the Department done in the interim to work with Senator Feinstein to ensure that legislation is constitutional? And has the Department conducted any formal review of the constitutionality of the bill?

Mr. WALSH. Senator, if I could start off—thank you for the question. If I may start off by just saying that the Department strongly supports the goals of Senator Feinstein’s bill to enact an assault weapons ban as well as a ban on high-capacity magazines, and that we are confident that both an assault weapons ban and a high-capacity magazine ban can be crafted that is effective and also complies with the Second Amendment.

As I sit here today, I know that there have been communications back and forth with staff. We have certainly within the Department technical firearms experts who can assist in working through the provisions. But I am not aware of a formal opinion, for example, as to the constitutionality of the proposal that is before the Committee at the present time.

Senator GRASSLEY. Okay. A second question to you. When Mr. Heaphy testified before the Subcommittee, he stated that he was “not familiar enough with the *Heller* opinion to really give you an opinion on” what level of scrutiny is to be applied to address whether an assault weapon ban is constitutional. So I hope you are more prepared than he was. So unlike Mr. Heaphy, have you actually read *Heller*? Can you tell us what level of constitutional scrutiny that the most important Supreme Court decision would apply to an assault weapon ban?

Mr. WALSH. First of all, Senator, I have read the *Heller* opinion. I want to be careful in indicating, as I did a moment ago, that the Department has not issued a formal opinion specifically on the con-

stitutionality of the particular legislation that is before the Committee.

Having said that, I think the important thing to keep in mind and for the Committee to be keeping in mind with respect to the constitutionality of an assault weapons ban is the three-part threshold that Justice Scalia in the *Heller* opinion articulated: whether a weapon is in common use at the time the legislation is introduced; whether the weapon is a dangerous and unusual weapon of the kind that has traditionally been regulated and accepted; and then, finally, whether or not the legislation under consideration in some manner impacts what is really the core of the Second Amendment right, and that is the self-defense right.

If you look at each of those three different thresholds, so to speak, I think it is fair to say—and I know that the administration is confident—that an assault weapons ban can be crafted that successfully and appropriately protects American citizens' Second Amendment right. That is something that I am certain that we will continue to work with the Committee and with Senator Feinstein in the course of this, and I have great confidence that we can come up with effective bans that do not infringe on those rights.

Senator GRASSLEY. But to this point, you do not know whether the legislation meets that test?

Mr. WALSH. I think we are confident that the legislation is headed in the right direction and that we are able—that we will be able to craft specific legislation that does comply. And I will tell you that I am certain that the President would not sign a bill that he did not believe was in accordance with the Second Amendment.

Senator GRASSLEY. Is an AR-15 in common use? And there are over 4 million of them in use today.

Mr. WALSH. Well, certainly there are quite a few AR-15s in use today. There is no question about that.

On the flip side if you take a look at the percentage of AR-15s out of the total number of guns owned by Americans, I think you could have a discussion about whether or not an AR-15 is really a common weapon these days. So that is an issue that I think will have to be discussed down the road.

Senator GRASSLEY. Well, then, let us look at the AR-15 from another standpoint. Is it dangerous and unusual?

Mr. WALSH. Well, I think it is certainly dangerous, and I think that the point of today's hearing and really the thrust and concern of the Department's position on this subject is that an AR-15 is a very dangerous weapon.

Senator GRASSLEY. On another point dealing with level of scrutiny, how about that level of scrutiny that would apply to a limitation on magazine capacity?

Mr. WALSH. Well, the same issue arises, the same three-part test. If I could focus on the dangerous and unusual component first, when you see magazines of the size that we have seen in so many mass shootings—and I will just use the one that is closest to my experience, unfortunately, which is the 100-round magazine that was used in Aurora in July of 2012. It is difficult to see how anyone could conclude that that is not a dangerous device when coupled, in particular when coupled with an assault weapon like an AR-15. Regrettably, what we saw in Aurora—and I want to be careful



about this and only speak to what is in the public record because there is a pending criminal prosecution. What we saw in Aurora was that in the very short period of time in which the shooter was shooting, 12 people died. Of those 12 people, 10 died from wounds inflicted by the assault weapon. One died as a result of shotgun wounds, and one was hit by both.

The dangerousness of a high-capacity clip, a 100-round clip, I think is hard to deny.

Senator GRASSLEY. Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

Senator Durbin.

Senator DURBIN. Thanks, Madam Chairman. Let me start my statement and question by thanking you. You have been under a lot of heat for your leadership on this issue for a long, long time, and the fact that we have endured so many tragedies—Newtown being the most recent—is an indication that your early inclination toward restricting and regulating the use of these weapons was certainly necessary to keep America safe. I am glad you have continued in that effort.

Let me address, Mr. Walsh, for a moment some questions from Senator Grassley because we did have a hearing before the Constitution Subcommittee. It is clear in the *Heller* decision and *Heller II* that what the Court found to be the core purpose, core lawful purpose of the Second Amendment was individual self-defense. So restrictions in *Heller II* on high-capacity magazines and assault weapons, the court of appeals held, do not effectively disarm individuals or substantially affect their ability to defend themselves.

The Second Amendment, like the First Amendment, does not prevent lawmakers from enacting reasonable regulations that do not seriously interfere with the core right guaranteed by the Constitution.

So it comes to this point, Mr. Walsh: That man stood in that theater in Aurora, Colorado, with a magazine with a capacity of 100 rounds, using this assault-style weapon to try to kill as many people as possible. Fortunately, it jammed, as I understand it, which stopped him from his evil purpose, at least in its entirety.

So I guess the question which Senator Grassley raises is whether or not there is a constitutionally protected right under the Second Amendment for someone to own and use a gun with that capacity to kill. What is your conclusion?

Mr. WALSH. Well, Senator, if I may, I think one of the things that the Department has been very careful about in crafting proposals on this subject is to ensure that we are taking into account really the seminal decisions in *Heller* and *McDonald* by the Supreme Court, finding that the Second Amendment is, in fact, an individual right.

But in addressing those two cases and looking at the scope of the protections afforded by the Second Amendment, there clearly is room for reasonable regulation, particularly of dangerous and unusual weapons. And I think it is fair to say that the Department believes strongly that limitations on high-capacity magazines, anything—the Department's position is anything over 10 rounds, would be constitutional based on that analysis.

Senator DURBIN. So let me ask you the second part of this. We have gone through tragedy after tragedy in the city of Chicago with gun violence, and I have met with so many families—I mean, I cannot tell you how many—who have lost innocent children to gun violence, the Hadiya Pendleton family being the most recent. But there have been some sense it just continues, and it really troubles me—in fact, it angers me—when these are dismissed as a failure of law enforcement.

The argument has been made even in this hearing: There are adequate laws on the books. Well, why do you not just enforce the laws? These things would not happen.

Take, for example, the issue of straw purchasing. How many Federal prosecutions there were of alleged straw purchasers really misses the point. How many prosecutions were there, both State, local, and Federal? And it turns out that in many instances Federal prosecutors are turning to State prosecutors and saying you have a better chance to convict at a State level with a more meaningful penalty.

So let me bring that right home to you, to the U.S. Attorney's Office. When you are faced with a potential prosecution for obvious straw purchasers, what calculations go through your mind about whether to pursue that prosecution?

Mr. WALSH. Well, Senator, if I may, I would like to emphasize something that you commented on a moment ago, and that is, our work has to be in close cooperation with State and local police and State and local prosecutors as well. We really need to work as a team. We have to come at the gun violence problem as a combined group, and that gives us opportunities in many circumstances to choose, in cooperation with a State district attorney and a U.S. Attorney, to decide where the charges are best brought and where the highest likelihood of a conviction and a meaningful sentence may be found.

So, for example, in the spring of 2011, in Aurora, by coincidence, there was a spate of officer-involved shootings, and there was great concern in Colorado and in the Denver metropolitan area that we were about to embark on a summer of violence, so to speak. So in conjunction with Chief Oates of Aurora, Chief White in Denver, and other chiefs in the metropolitan area, we convened a group of law enforcement, State and Federal law enforcement folks, ATF included, and did a summer initiative aimed at aggressively and proactively reaching out and arresting felons and other criminals who were either attempting to get guns or actually buying them.

At the end of that effort over the course of a summer, there were a total of 85 criminal prosecutions and convictions, and they were a mix. The majority were Federal prosecutions, but there were a substantial number that we took stateside, so to speak, because that was the most effective way to approach the case in a particular area.

So to go to your question about trafficking, part of the difficulty that we have and part of the reason that we have asked the Committee to consider and the President has proposed a stronger gun-trafficking law is that currently we are basically trying to prosecute those cases under a false statement theory. It is 18 U.S. Code 922(a)(6). Those cases are difficult, and many times a judge or a

jury may see that kind of a prosecution as more of a paperwork violation rather than something that really implicates public safety.

Unfortunately, for those reasons, we need to assess—and the line prosecutors, the career prosecutors who are making these decisions, often say, “We need to find some other way to take this particular bad actor off the street.”

Senator DURBIN. Let me just say—in conclusion, Madam Chair—yours is the second testimony under oath within the last several weeks that has said exactly the same thing, that this is a shared responsibility of prosecution. And I wish those who were criticizing what is going on in many States and jurisdictions across the country would at least take notice of the fact that there are prosecution efforts underway that are not assisted by the fact that many of our laws at the Federal level are just too weak when it comes to this subject.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you, Senator Durbin.

Senator Graham.

Senator GRAHAM. Thank you, Madam Chairman, and I appreciate you having this hearing.

The President urged the Congress to vote on matters like this, and I could not agree more. I think we should take legislation like this up and get on record and make our respective cases. And there is no doubt that Senator Feinstein has longly held views on this and very sincere. And to the victims of all these shootings, I do not know what to say other than I am sorry, and we will have a discussion about this topic in light of the world as it is rather than the world we would like it to be.

How many crimes are committed with rifles in terms of homicide in the United States? What percentage of all homicides are committed by rifles? Do either one of you know?

Mr. WALSH. Senator, I know that it is a small fraction of—

Senator GRAHAM. In 2011, it was 2.5 percent of U.S. homicides were committed by a rifle of any type. Twice as many people were killed with bare hands.

Now, how many prosecutions have you taken upon yourself or how many prosecutions have you taken up for failing a background check since you have been U.S. Attorney?

Mr. WALSH. Senator, off the top of my head, I am not aware of any that we have done in the District of Colorado.

Senator GRAHAM. Okay. Well, what I want to do is put into the record the Federal background check form that says up top you are subject to prosecution if you provide false information.

How many cases have you referred to State prosecutions?

Mr. WALSH. On that particular—

Senator GRAHAM. For failing a background check.

Mr. WALSH. Senator, I do not have a specific number on that, but if I may, I do think it is important to recognize where our focus is. Our focus is on prosecuting criminal—

Senator GRAHAM. Because, clearly, your focus is not on prosecuting people who fail background checks. Would you agree with that?

Mr. WALSH. Our focus is on—

Senator GRAHAM. If you have not done any, how could you not disagree with that?

Mr. WALSH. I do not disagree with it, Senator.

Senator GRAHAM. Okay.

Mr. WALSH. Our focus is on——

Senator GRAHAM. And the point is if we are going to expand background checks, it looks to me like we ought to start enforcing the law that is on the books, because when almost 80,000 people fail a background check and 44 people are prosecuted, what kind of deterrent is that? I mean, the law obviously is not seen as that important. If it is such an important issue, why are we not prosecuting people who fail a background check? And there are 15 questions there. They are not hard to understand if you are filling out the form.

So I am a bit frustrated that we say one thing, how important it is, but in the real world we absolutely do nothing to enforce the laws on the books.

Now, let us talk——

Chief FLYNN. Just for the record, from my point of view, Senator, the purpose of the background check——

Senator GRAHAM. How many cases have you made? How many cases——

Chief FLYNN. You know what? It does not matter. It is a paper thing. I want to——

Senator GRAHAM. Well——

Chief FLYNN. I want to stop 76——

Senator GRAHAM. Can I ask the questions?

Chief FLYNN. I want to finish the answer.

Senator GRAHAM. Well, no. I——

Chief FLYNN. I want to stop 76,000 people from buying guns illegally. That is what a background check does.

Senator GRAHAM. How many AR-15s are legally——

Chief FLYNN. If you think we are going to do paperwork prosecutions——

Senator GRAHAM [continuing]. Owned——

[Applause.]

Chief FLYNN. You are——

[Applause.]

Senator GRAHAM. How many——

Senator FEINSTEIN. All right. If you——

Senator GRAHAM. How many cases have——

Senator FEINSTEIN. Senator, Senator, if you would withhold just for a moment.

Senator GRAHAM. Yes.

Senator FEINSTEIN. Please.

Senator GRAHAM. That is fine.

Senator FEINSTEIN. No expressions one way or another, and let us keep this civil. Senator Graham and I just got recognized for civility, so I know he will keep it civil.

Senator GRAHAM. But being civil and being firm in your convictions are not inconsistent, are they? I admire what you do. I think every cop deserves everything that comes their way and then some, because it is a dangerous job. Has your budget gone down in the last year?

Chief FLYNN. It has been level funded by the city at great expense with great difficulty.

Senator GRAHAM. In the next decade, do you expect more or less money given the budget situation?

Chief FLYNN. Probably less.

Senator GRAHAM. Yes, I think that is just a reality. So I want Americans to know that what this police chief is facing almost every other police chief is facing, less money, so you may have to defend yourself.

But back to the question. How many cases have you made for somebody violating a background check?

Chief FLYNN. We do not make those cases, Senator.

Senator GRAHAM. Okay. All right.

Chief FLYNN. We have priorities.

Senator GRAHAM. Have you ever—

Chief FLYNN. We make gun cases. We make 2,000 gun cases a year, Senator.

Senator GRAHAM. How many—

Chief FLYNN. That is our priority. We are not in a paper chase.

Senator GRAHAM. How many cases—

Chief FLYNN. We are trying to prevent the wrong people buying guns. That is why we do background checks. If you think I am going to do a paper chase, then you think I am going to misuse my resources.

Senator GRAHAM. I am just trying to ask you a question about how the law works today. He has made no cases. You have made no cases because you say it is really not within your bailiwick. How many cases have you had turned over from the U.S. Attorney to prosecute at the State level that you know of?

Chief FLYNN. We all know the answer to these questions, Senator. They are self-answering. We do not chase paper. We chase armed criminals.

Senator GRAHAM. Well, I guess the point is, if we do not want the wrong people to own guns, which we all agree, then the one way to do that is to take the system that is supposed to distinguish between the person who should and should not and enforce it. I own an AR-15. I passed the background check. Is it not really about who has the gun sometimes more than the gun itself? And I guess the point I am trying to make, if there are 4 million AR-15s in this country owned by people like me, I think the argument would be that it is in common use. And you may not understand why I want to own an AR-15, and I may not understand what movies you want to watch. But we are talking about trying to solve a problem that has as its central core that the people who are committing these crimes should never have any gun or one bullet. That is what we all agree on. And the best way to prevent crazy people, mentally unstable people from getting a weapon is to identify them somehow before they murder somebody, they steal it, or they try to buy one.

Now, I will end on this note. In South Carolina—I have got parents from Ashley Hall here, that a lady went into Ashley Hall with a .22 automatic pistol, semiautomatic pistol—and thank God the gun did not function—who passed a background check at the Federal level, who was adjudicated not guilty by reason of insanity of

trying to kill the President of the United States. So before I am told by my colleagues on the other side and the two witnesses we need to change our laws, I would argue that the law is fundamentally broken when almost no one gets prosecuted. And if you can pass a background check having been adjudicated mentally insane by a Federal court, I think the place we should start is fixing the laws we have rather than expanding them and creating a false sense of security.

Thank you.

Senator FEINSTEIN. Thank you, Senator Graham.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair, and thank you very much for your longstanding and passionate commitment on this issue, a passionate commitment that is very well founded in your own experience.

I would supplement what my friend Senator Graham said by suggesting that we can both clean up and improve the enforcement of the existing laws and expand background checks and take the necessary steps to make sure that truly dangerous and unusual weapons stay out of the hands of those who intend to do terrible harm to their fellow citizens.

And in the context of that, this is our second hearing on this subject, and in the last hearing, an array of witnesses from both sides appeared, and I was struck that one of the Republican witnesses who was testifying contrary to gun legislation conceded that these large-capacity magazines do not fall within the *Heller* description. And so I think we are on very safe ground constitutionally addressing the high-capacity magazines.

I think it is important that people understand what a difference it makes when somebody undertakes to commit one of these terrible crimes and they have the additional capacity for evil and for harm as a result of the additional capacity in those magazines.

Now, Mr. Walsh, you have obviously looked very closely at the facts of what took place in Aurora. I suspect you have also looked at the facts of some of the cases that did not occur in your jurisdiction.

To the extent that you can do so, while staying within the public record and not getting into grand jury Rule 6(e) or other information that is not public yet, could you describe for us the events that took place in that movie theater in Aurora and in light of the high-capacity magazine that the shooter had and what you think might have been different had that weapon not existed in your case? And if you have information to share about other cases, if you could discuss them as well.

Mr. WALSH. Senator, I want to touch on three different instances of mass shooting where I think a high-capacity magazine had tragic consequences. I do need to be careful in discussing the Aurora theater shooting, and so I am going to be very specific.

Senator WHITEHOUSE. We understand that. You have restrictions that arise with your duties, and I appreciate that.

Mr. WALSH. In the Aurora theater shooting, a matter of public record is that the shooting that resulted in 12 dead and 58 wounded took place within the scope of 90 seconds. The fact that there

were high-capacity magazines in play during that time was obviously material.

In the Newtown shooting, the information I have is that all of the shooting took place in less than 4 minutes. Again, in that case, high-capacity magazines were used.

In the Tucson, Arizona, shooting of 2 years ago, or 2 years and some, there were high-capacity magazines, and it was after a 30-round magazine was expended by the shooter that really, frankly, heroic bystanders were able to tackle him and stop the shooting. You have to wonder if he had only had a 10-round clip whether lives would have been saved. There is certainly evidence in that situation to suggest lives would have been saved.

These events happened very quickly. There is no way that we are going to prevent people from engaging in these sorts of attacks completely. We do not have a crystal ball that enables us to see into the mind of an individual who might be bent on this kind of horror.

What we can do and what I think this legislation helps us do by limiting and banning high-capacity magazines is we can limit the damage and the tragedy and the horrific casualties that those people cause when they undertake these sorts of actions.

Senator WHITEHOUSE. And my final question: When you consider the amount of damage that was done in these very, very narrow time frames—90 seconds or 4 minutes—how realistic do you believe that adding armed guards to schools is at responding to and intervening in such a sudden and deadly attack?

Mr. WALSH. Senator, I do not want to rule out the potential value that a particular local school board might put on having an armed guard. There are certainly situations where you can imagine it being of assistance. It is hard to see, though, that armed guards are going to solve this problem if they are confronting someone with the sort of armaments that so tragically we saw both in Aurora and also in Newtown. And it is worth mentioning, too, the schools are maybe the most horrible example of where mass shootings take place, but they are not the only places. And unless we are going to have armed guards in every—

Senator WHITEHOUSE. As we know all too well. Thank you very much.

Mr. WALSH. Thank you.

Senator WHITEHOUSE. Thank you, Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

Let me just read the list. According to our rules—I was just debating them with the staff—it is Senators Cornyn, Klobuchar, Cruz, Franken, Lee, and Blumenthal. And I know Senator Blumenthal was actually the first in the room, but the staff is telling me that that is not early bird. Early bird is you have to be here at the same time the testimony begins. So I make that apology to you. I am aware—

Senator BLUMENTHAL. No apology necessary, Madam Chairman. I am here for the duration.

Senator FEINSTEIN. Good. Thank you.

Senator Cornyn, you are up next.

Senator CORNYN. Thank you, Madam Chairman. Thank you to the witnesses. And I know the families who have been affected by

gun violence have our sympathy and our desire to find some way to ameliorate or mitigate violence in our society. But I think we are actually interested in what would work.

First of all, Mr. Walsh, we appreciate your service as U.S. Attorney, and you are here today speaking on behalf of the Department of Justice.

Mr. WALSH. That is correct.

Senator CORNYN. Would you define what an assault weapon is?

Mr. WALSH. From the point of view of the Department, I think there are a couple of critical considerations. I realize, of course, that the legislation includes a very elaborate definition of particular aspects of assault weapons which would qualify them for an assault weapons ban, and I do not mean to comment on those specifically. I do want to focus on some of the attributes that I think are most important and make these weapons so dangerous.

First of all, frequently we are talking about a weapon—or generally we are talking about a weapon that is a rifle and, therefore, has a high muzzle velocity capable of doing an enormous amount of damage when the round hits a victim.

Secondly, they are capable of very high rates of fire.

And, third, they are also capable of accepting a very high capacity magazine.

There are other features, obviously, that I know are covered in the bill, for example, a pistol grip, a threaded barrel. I believe, in fact, a grenade launcher attachment is included. Those are all things that are not merely cosmetic but, in fact, have some effect on the lethality of a weapon. But the three points that I just made to you as to the things that really make these weapons the most dangerous are I think where the Department's concerns lie.

Senator CORNYN. And you are aware of the fact that under this legislation, were it to pass, none of the current so-called assault weapons that are in people's possession would be affected, correct?

Mr. WALSH. That is correct. There is no confiscation of weapons or anything of that sort contemplated by anyone.

Senator CORNYN. Do you have any idea how many there are in the possession of law-abiding Americans?

Mr. WALSH. I have seen various estimates. The number that was being discussed in this hearing earlier today was 4 million. I have seen 3.5 million, in that range.

Senator CORNYN. So there would be 3.5 or 4 million of these weapons that would be prohibited prospectively under this legislation that would still be in the possession of American citizens?

Mr. WALSH. That is correct, Senator. Now, you know, the fact that we cannot completely address this issue immediately does not mean that over time a ban on new weapons coming into the stream of commerce is not going to have the effect of improving the safety of the American people.

Senator CORNYN. Well, I know there is a lot of debate within the Department of Justice whether the previous assault weapons ban had any impact whatsoever. As a matter of fact, there are some—I will just quote from part of the 1997 DOJ study. It said, "The evidence is not strong enough for us to conclude that there was any meaningful effect, i.e., that the effect was different from zero."



So if we are actually interested in what is going to solve the problem of gun violence in America, I think we would want to do something that was not tokenism or symbolic. We would want to try to figure out how to actually solve the problem, if we can.

Could you identify any of the recent tragedies that we have seen, whether it is Aurora or Tucson or Newtown, where those tragedies would have been averted if this legislation had been in effect?

Mr. WALSH. Senator, I cannot tell you that they would have been 100 percent totally averted. I can tell you with some confidence that the casualty levels would have been lower if the perpetrators did not have the kind of high-capacity magazines that they possessed and the kind of assault weapons that in a number of these cases were used.

But if I may go back to your earlier point, Senator, on the question really of the effectiveness of the 1994 assault weapons ban, part of the difficulty there is that the ban has not been adequately studied, and I think the conclusions that you were referring to, which I think accurately depict some of the more recent conclusions, are as a result of not having the data necessary to fully analyze the results.

There were a couple things that came out that I think are very important and which would strongly support a new assault weapons ban. One is——

Senator CORNYN. My time is just about out. If you will permit me——

Mr. WALSH. I apologize.

Senator CORNYN. And hopefully we will continue the conversation.

Mr. WALSH. Thank you, Senator.

Senator CORNYN. So here is the quandary that I find myself in. The Department of Justice's record of actually enforcing current gun laws, you will forgive my saying, is abysmal. For example, people who lie on background checks are not being investigated or prosecuted with any sort of uniformity or reliability. As a matter of fact, out of 76,000 denied background checks the FBI referred to the Bureau of Alcohol, Tobacco, and Firearms, a verdict or plea was reached in 13 cases. Then the 2008 law that Congress passed, which encouraged the States to send to the Federal Government adjudicated mentally ill persons that could be included on the background check, that has been a very spotty record of compliance by the States. So we have people who have been adjudicated mentally ill who will not show up on a background check because that 2008 law has not been adequately enforced.

And then there is this, and then I will quit, Madam Chair: We see a number of States, like Connecticut, for example, that have much more restrictive gun laws where some of these tragedies have occurred, and they have not stopped it. And you even have countries like Mexico where you have had 60,000 people killed as a result of drug cartel activity. In other words, criminals are not stopped by restrictions on law-abiding citizens. And it is just not clear to me that passing more laws that will not be enforced enthusiastically by the Department—and you look at the studies that have been done on the previous assault weapons ban, and no evidence that it actually had any impact whatsoever. You say it needs

more study, and that is fine. I would be interested in what the study reveals. But just call me skeptical that passing this assault weapon ban would have any real impact given the fact that criminals are going to continue to get guns and the lack of enforcement by the Department.

Thank you, Madam Chairman. You have been very indulgent.

Senator FEINSTEIN. Thank you very much, Senator.

Mr. WALSH. Madam Chairman, may I respond? I know that time is up.

Senator FEINSTEIN. Yes, you certainly may.

Mr. WALSH. In response to your points, Senator, I have just a couple of, I think, really important things that need to be said here today.

First of all, I could not disagree more strongly that the Department of Justice is not aggressively enforcing existing firearms laws. We spend an enormous amount of time, effort, energy, talent, skill, and, frankly, sleepless nights enforcing those laws.

If you take a look at 2012, the total number of criminal prosecutions brought by the Department of Justice was in the vicinity of 85,000. Of those, 12,000, one in seven, involved firearms charges.

In Colorado, a couple weeks ago we did an assessment, a similar assessment for 2012, and in Colorado, close to one in five of the criminal prosecutions that we bring are cases involving firearms charges.

Now, what are those cases? Those cases are those in which a criminal actually has and uses a firearm. We have limited resources. I know everyone in this room understands that the Federal Government, just like State and local authorities, has limited resources to address these things.

As a prosecutor, and as the prosecutors in my offices consider cases, we go for the worst of the worst. And the worst of the worst cases are the ones in which a bad guy has actually got a gun. That is where we focus our attention.

Now, I acknowledge that paperwork violations, lying on forms, are also Federal crimes. But part of the thing that I think all of us need to keep in mind is the fact that 80,000 or 76,000 people in 2012 were rejected as part of the firearms check and not able to buy a firearm, that in and of itself is a victory. That system is working.

If you go back to when the Brady law firearms check first came into effect in 1998, I believe, there have been over 1.5 million potential purchases rejected because a person is prohibited, either by a prior felony or other problems. That is a record of success. We should be proud of that. But there is also no way that the Department of Justice could have prosecuted all 1.5 million people who were rejected over that 15-year purpose.

My point, Senator, is this: I am an enforcement guy. I care about enforcement. I completely agree with you that we need to be enforcing the existing firearms laws effectively, aggressively, and in a way that protects the public. But I can tell you, when I think about the people in my office who work weekends and nights, send me e-mails at 2 and 3 o'clock in the morning because they are working so hard to enforce these laws, I just have to tell you I disagree with you. These are line folks, they are career folks. They are not people

who are driven by any of the politics that go on. They care deeply about their——

Senator CORNYN. Madam Chairman, if I can just say, I applaud you, Mr. Walsh, for your commitment to law enforcement. I used to be in your line of work, and I admire people who put their lives at risk every day to either enforce our laws or investigate crimes and prosecute those to the fullest extent of the law.

But I do not believe—well, let me just ask, Madam Chairman, if I can ask that the record that I was referring to of the Department of Justice's record of enforcement for weapons prosecutions and background checks prosecutions could be made part of the record, please.

Senator FEINSTEIN. So ordered.

[The information appears as a submission for the record.]

Senator CORNYN. Thank you.

Senator FEINSTEIN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Madam Chair. Thank you, both witnesses, for your work in law enforcement. Our neighboring State of Wisconsin, Chief Flynn, and also in Colorado, I think all three of our States share a common belief that hunting and recreation is an important part of the culture of life in our States. It is certainly important in Minnesota.

I have supported the *Heller* decision and was on the amicus brief for the *McDonald* decision, but I thought you, Chief Flynn, did a good job of explaining how still those decisions—and you, Mr. Walsh, those decisions anticipated that there are reasonable rules and regulations. And it is our job, working with you, to figure out what those are. And I think that is what this hearing is about.

The first thing that I think there is some agreement on is that felons should not have guns, and you had a good discussion there with Senator Cornyn, so I am not going to go into that. As a former prosecutor, that was one of my top priorities, to enforce those laws, to work with the U.S. Attorney's Office.

A second one that is emerging is the problem with the background checks. I think most gun owners even agree that we should have some kind of background checks.

One of the problems right now is the private sale loophole. The data from the FBI show that the number of women killed with a firearm by an intimate partner is 34 percent lower in States that have closed the private sale loophole than in States that do not regulate such sales.

Do you think that this would be helpful, Mr. Walsh, in domestic abuse cases to close that loophole?

Mr. WALSH. Senator, thank you for the question.

Senator FEINSTEIN. Your mic is off. Thank you.

Mr. WALSH. Sorry. Senator, thank you for the question. You know, one of the most effective and important elements of existing Federal law is a provision that prohibits people with domestic violence misdemeanor as well as felony convictions from owning a weapon, and the reason for that is the statistics show that in cases of particularly habitual domestic violence, the presence of a gun in the home can be deadly. And too many of those cases result in the death of the abused spouse or the abused intimate partner.

One of the areas where we need to have an invigorated existing database and then an expanded database to cover all sorts of private transactions is exactly that area, because right now all too often those misdemeanor offenses may or may not show up accurately in the database, depending on how a State is reporting them, and we need to tighten that up in many instances.

We also need to make really strong efforts to ensure that particularly habitual domestic violence offenders are not able to obtain a gun from a friend or through a straw purchase or things of that sort, and that is why tightening up and extending the background check to cover private transactions could be of great assistance.

Senator KLOBUCHAR. Another area I think most people would agree on would be the trafficking issues, and I will submit some questions on that for the record. But there is difficulty for law enforcement to investigate and prosecute those who traffic firearms, and I think most people would agree that is an area where it would be reasonable to make some regulations.

We have the issue of the mental health records and some of the juvenile issues. We actually in Minnesota had a guy that killed his parents, got out—this just happened last year—and they found him with a bunch of weapons because there was an error in how the background checks were made and what was in the records and those kinds of things. And he had actual notes about Newtown when they found him with those guns. And so I just believe that more work can be done there, and there should be public support for that.

My last question would be of you, Chief Flynn. We have heard a lot of statistics thrown around about the effectiveness of the assault weapon ban. You have been in law enforcement for 40 years. What was your personal experience? And did you observe a change when the law was first enacted in 1994 when it sunsetted in 2004?

Chief FLYNN. Well, thank you, Senator, for the question. Listen, you know, back in the years when I was in graduate school, I had to endure research and statistics classes. They made my hair hurt. But I did learn a thing or two, and one of the things I learned was the difference between correlation and causation. And what we have is a study in 2007 that studied the Brady bill. It clearly identified correlations. It could not identify causations. Why? Because it was written by Ph.D.s, and Ph.D.s can never decide anything.

The fact of the matter is, during the life of the Brady bill, the number of assault weapons used in violent crimes declined by two-thirds. Now, we did not do a control study. We did not do a study where we gave out AK-47s and then compared and contrasted with a State in which nobody had an AK-47. Then we would know. Instead, we took a leap of faith. We made this assumption, bold as it was, that keeping high-capacity firearms and military-style weaponry out of the hands of criminals might reduce violence. And violence was reduced.

Now, the police did a lot of things. We changed our strategies. We embraced community-oriented policing. We embraced accountability systems such as ComStat. We worked very hard. We worked closely with the D.A.s. We worked closely with the community. We put a lot of guys in jail. And we started recovering fewer assault rifles.

But can I show a causation? No. Is there a correlation? Yes. And so it all depends how you want to spin the data, and that is a cottage industry all by itself.

Senator KLOBUCHAR. Thank you very much, Chief Flynn.

Senator FEINSTEIN. Thank you very much, Senator Klobuchar.

Senator Cruz.

Senator CRUZ. Thank you, Madam Chairman. I would like to begin by thanking the victims of violence who have come here and the members of law enforcement. I would like to thank the members of law enforcement for your service on the front lines. And to the victims of violence, I express the deepest sympathies that law enforcement was not able to prevent the horrific crimes you suffered.

Mr. Heslin, I have two little girls. I cannot imagine the suffering you are experiencing now. I have spent much of my adult life in law enforcement working to deter violent criminals and to ensure that those who commit horrific crimes of violence face the very strictest of punishments. And I am sorry for each of the victims here today who lost loved ones that the system did not work to protect your loved ones and prevent the loss of life.

This is an issue that touches on a lot of emotions, and I would suggest an approach that, in my view, should guide the Senate's treatment of it, which is an approach that we should target our efforts to violent criminals, to those who commit horrific crimes of violence, and we should not target our efforts to needlessly restricting the constitutional liberties of law-abiding citizens.

In the area of gun control, I think there are a variety of proposals that are discussed. Some, in my judgment, the evidence demonstrates, are cosmetic and they allow politicians to say we are acting, but the evidence does not support that they have any efficacy. Others I think present a real threat of intruding on the liberties of law-abiding citizens.

I want to start, Mr. Walsh, with respect to the assault weapons ban, and in earlier questioning you said that there had been not enough study on the assault weapons ban. Of course, a very similar law was in effect for roughly a decade. And the Department of Justice has funded at least three studies of whether that bill had any positive effect. In 1999, the DOJ study concluded that the assault weapons ban "failed to reduce the average number of victims per gun murder incident or multiple gunshot wound victims."

In 2004, the National Institute for Justice concluded that the assault weapons produced "no discernible reduction in the lethality and injuriousness of gun violence."

And then in 1997, the study that was already discussed likewise concluded that there was no evidence to say any meaningful effect different from zero.

Are you aware of any compelling empirical data to the contrary? We have got three studies funded by the Department of Justice that concluded the prior ban had no effect. Are you aware of empirical data to the contrary?

Mr. WALSH. Senator, let me say two things in response, and I think it is an important question to ask.

First of all, my understanding of what those studies said is that the statistical analysis was inadequate to establish an effect, not

that it had statistically established no effect. It is a fine point, but it is an important one, because Dr. Koper, who led the studies in each of those instances, most recently came out with a January 2013 sort of update description of his studies and thoughts for the future, and in that indicated that he thought that an argument could be made that over time, if the assault weapon ban had continued past 10 years and had been continued to be coupled with a high-capacity magazine ban, that the combination of those two things might have had as much as a 5-percent effect.

Senator CRUZ. If I understand your answer correctly, you did not point to any empirical data that demonstrate that it had any effect whatsoever on violent crime. Is that correct?

Mr. WALSH. Not conclusive evidence that it had an effect on the overall—

Senator CRUZ. Inconclusive, I mean, any empirical data?

Mr. WALSH. Well, I think that the empirical data that Dr. Koper has referred to, you could say—he said he believed that there was certainly a suggestion that on the margin there was an impact. But it was not necessarily statistically significant that he could tell from his work.

Now, having said that, there are two areas—there are two areas that I think are important to keep in mind statistically, if I can risk that. One is that there is certainly good evidence that assault weapons are used disproportionately in attacks with multiple victims and victims with multiple wounds. And then, secondly, there is also good evidence to suggest that assault weapons are used disproportionately on attacks on law enforcement officers. And I think those two points, perhaps even standing alone, would justify that we proceed with an assault weapons ban.

Senator CRUZ. Mr. Walsh, there was earlier discussion about causation and correlation.

Mr. WALSH. That is correct.

Senator CRUZ. According to the BJS, from 1993 to 2001, which roughly corresponds with the assault weapons ban—not perfectly but roughly—there were an average of 611 homicides per year with rifles while the assault weapons ban was in effect. In 2010, the number of homicides with rifles was 358, a little more than half as much. In 2011, it was 323. That is without the assault weapons ban in place.

Would you agree that that data does not suggest that the assault weapons ban had any significant efficacy in reducing violent crime?

Mr. WALSH. Well, I think that if we go back and look at the studies, the conclusion of Dr. Koper and his colleagues was that there were multiple factors playing into that. Fortunately, over that same period of time, we were seeing overall a reduction in violent crime in the United States, which also impacted it.

So the simple answer is I do not have a statistical response for you. I am not an expert in that area. I think it is fair to say that the evidence of effectiveness of the original assault weapons ban was mixed, but there were some areas in that, as I have already mentioned, where the Department of Justice believes there was a positive effect in reducing the total number of victims, and if the ban were extended and not made to sunset after 10 years, that over time we could see an improvement in public safety.

Senator CRUZ. My time has expired, but I hope as the hearing proceeds we can discuss how the Department of Justice and law enforcement can target violent criminals directly rather than either legislation that the data suggests would have no material effect or legislation that would strip law-abiding citizens. Instead, I would suggest we should be targeting violent criminals because that is how we actually will protect people's lives, which is everyone's objective here.

Thank you.

Senator FEINSTEIN. Thank you, Senator Cruz.

Senator FRANKEN.

Senator FRANKEN. Thank you, Madam Chairwoman, and thank you for your leadership on this difficult and enormously emotional issue on every side.

I have been doing a lot of thinking and a lot of soul searching the last several months. I have spent a lot of time traveling around Minnesota, talking with my constituents about this issue. And what I am hearing is that people want us to take action to reduce gun violence and to make our communities safer, but they want us to do it in a way that honors the Second Amendment and respects Minnesota's culture of responsible gun ownership. So there is a balance to be struck here.

I have focused on mental health issues while continually underscoring how important it is not to stigmatize mental illness. The vast majority of people who are mentally ill are no more violent than the general population. But if we are going to make mental health a part of this, let us make it more than just a talking point. Let us really do something to improve the treatment and the access to treatment for children and for adults.

But today we are talking about assault weapons. To prepare for this hearing, I went back and read the record from the last two hearings. One of the arguments we have heard is that assault weapons and large-capacity magazines are needed for self-defense. A witness at our first hearing gave us a list of more than 20 instances in which guns were used in self-defense. But I have not seen any evidence that any of those cases involved an assault weapon or a large-capacity magazine.

Rather than presenting real cases as evidence for the record that these weapons are needed for self-defense, witnesses and members of this Committee have asked us to imagine hypothetical situations where someone needs an assault weapon or more than 10 rounds for self-defense against multiple attackers.

Now, sure, I can imagine those hypothetical cases, but I am not sure what value that holds. But I do not have to imagine someone using a 30-round magazine, or several, to kill 20 children, because that happened.

I do not have to imagine a deranged man using a 100-round clip to kill 12 people at a movie theater. That happened in Aurora.

I do not have to imagine a madman firing 33 rounds uninterrupted at a grocery store parking lot, killing six people, including a little girl, and wounding 13 others, including a Member of Congress, because that happened. It happened in Tucson.

And I do not have to imagine a madman with an extended clip slaughtering six people at a sign factory, because that happened in Minneapolis.

As a Senator, I have a responsibility to make informed decisions. We owe it to all Americans to address this complex and emotional issue with a healthy regard for reality and fidelity to the truth.

So if we ban assault weapons and large-capacity magazines, will we save lives? That is the real question. It is not an easy one. And we have been discussing this data.

In previous hearings, we were actually told that a 1997 independent study commissioned by the Clinton Justice Department, one that was just discussed, we were told that it proved that the last assault weapons ban had no effect on crime, that it proved it.

Mr. Walsh, your testimony addresses that study as well as a subsequent DOJ study that was published in 2004. Do those studies prove, as we have been told, that the assault weapons ban was ineffective? Or do they show something else?

Mr. WALSH. Senator, if I may begin with the earlier 1990s study, actually the initial conclusion in that study is that there was potentially up to a 6.7-percent reduction in gun murders as a result of the assault weapon ban and the high-capacity magazine ban.

In subsequent analysis of that, the authors concluded that they were not certain that that was a statistically significant correlation. In other words, they were trying to be thoughtful and very precise about the amount of evidence that they had.

Senator FRANKEN. This was done only on one year's data, because it was in 1997, but they said, "Our best estimate is that the ban contributed to a 6.7-percent decrease in total gun murders between 1994 and 1995 beyond what would have been expected in view of ongoing crime, demographic, and economic trends." That is a quote, and sometimes you can cherrypick quotes. I think this is very important. Because you cannot prove that something is statistically valid, that does not prove that it did not happen. And, in fact, unless you cherrypick sentences from this—you can cherrypick others.

So an honest reading is not that this proved this did not have efficacy. It did not prove that at all, did it?

Mr. WALSH. No, it did not. And, Senator, if I could add two other points that I think are relevant to this discussion, since the assault weapons ban expired in 2004, a study by the Police Executive Research Forum in 2010 found that 37 percent of police departments reported an increase in criminals' use of assault weapons again since the time of the ban expiring, and as well as a 38-percent increase in the use of those weapons also using high-capacity magazines—in other words, those with more than 10 rounds.

So there certainly is evidence subsequent to that that the prevalence of these weapons and their use in crime is rising, which is, I think, something that we should be concerned about as well.

Senator FRANKEN. Thank you. I yield back.

Senator FEINSTEIN. Thank you, Senator Franken.

Senator Lee.

Senator LEE. Thank you very much, Madam Chairman, and thanks to both of you for being here with us today and for your service to our country. I appreciate what you do.



You know, we have all been horrified by acts of mass violence, including and especially those that have occurred in recent memory. I do not think there is a person here in this room, I do not think there is anyone watching on television these proceedings who does not want to find a way to end or at least diminish incidents of gun violence.

Obviously, there are a number of factors at play in our society and in our culture that have created an environment in which gun violence has regrettably persisted. But I worry at times that if we rush too quickly into enacting gun ownership restrictions, that could cause some problems:

First, because it could give the American people some basis for concluding that Congress can somehow put an end to this just by legislating. Experience in this area and in others has taught us that we cannot fix all of society's ills through legislation, and there has been some suggestion made today, some indication by the evidence, that there is at least a mixed record, there is at least an absence of certain proof as to the efficacy of gun ownership laws in the past.

Secondly, and perhaps more importantly, I worry about what some of the gun control measures that we have been discussing might do to the rights of law-abiding citizens. We have in society some people who will obey the law regardless of what the law says, and that is good. We have some people who are likely to disregard the law, regardless of what it says. Fortunately, in our society those in the former category have tended to predominate, and that is what allows us to have a society that generally lives according to the rule of law.

But we always have to be on the lookout for the law-abiding, because whenever we enact laws, it is those people whose liberty is diminished. It is those people whose options are constrained by what we do here. And so I focus a lot on those people. And this hearing provides us with an opportunity to discuss whether and to what extent the proposed Assault Weapons Ban of 2013 will help alleviate gun violence without diminishing the rights of those people.

So, Mr. Walsh, I would like to talk to you about this a little bit. In your written testimony, you state that magazines with more than 10 rounds are not necessary for self-defense because the majority of such shootings occur at close range. Am I understanding your written testimony correctly in that regard?

Mr. WALSH. Certainly that is included in the testimony, Senator.

Senator LEE. So let us assume that you are correct that the majority of self-defense shootings do occur at close range. What might this mean for those minority of instances in which law-abiding citizens might use a gun in self-defense in longer-range situations? Can we ignore the impact that any laws we adopt might have on persons who need more than 10 rounds to legitimately and lawfully defend themselves and their families or the needs of those people who might need a longer-range approach to self-defense?

Mr. WALSH. Senator, I think it is a good question, because obviously self-defense is the core of the Second Amendment protection, and we all acknowledge that and want to honor it. Having said that, I have a couple of thoughts.

One, part of the reason that most self-defense incidents occur at close range is that when you have an assailant who is at longer range, a potential victim has other options. In other words, you can leave the scene, you can call in for assistance and things of that sort, and the immediacy of the situation is not as dangerous. And I would defer to the police chief sitting by my side on the details of that. So that is point number one, that I think it is important to keep in mind there is a reason why the close-range incidents are far more common.

Secondly, the evidence that I have seen suggests that the vast majority of self-defense incidents involve one or two shots being fired, if any, one or two shots being necessary.

I will tell you that, in my personal experience as an Assistant U.S. Attorney and now as a United States Attorney, I am not aware of any specific self-defense incident in which a potential victim to defend him- or herself needed to fire more than 10 shots.

Now, hypothetically, I agree with you there could be a circumstance under which that took place, and in that scenario, I agree with you there is that potential marginal effect on that person's ability to defend themselves. I am just not aware of those instances actually happening.

Senator LEE. Okay, and I appreciate that. I do think that—and I see my time is running out. Let me just point out really quickly that there was a 1995 study on the use of guns in self-defense. And I understand that study concluded that in almost half of the instances in which a victim was attacked and thereafter used a gun in self-defense, there were at least two attackers, and that in nearly 25 percent of those situations, there were three or more attackers. So even at close range, would it not be helpful, if not critical, in those instances—which, granted, may well be a minority of the instances—would that not be helpful to have an ammunition magazine that had more than 10 rounds?

Mr. WALSH. Senator, if I—I am not sure I am familiar with the study you are referring to, but I do know there were statistics that were going around that related not to armed assaults—in other words, assaults with firearms—but assaults by assailants that were not all armed. And I would need to discuss that, need to have a chance to look at that.

But to answer your question directly, the fact is that if someone were confronted with three assailants armed with firearms, I suppose there is a hypothetical scenario under which having more than 10 rounds in a magazine would be of some marginal assistance. But, again, as I say, I am not aware of any such instance actually happening where someone has required more than 10 shots.

Senator LEE. Okay. Thank you.

Senator FEINSTEIN. Thank you very much, Senator Lee.

I would really like to thank the two panelists. I did not use all my time in the questions, and I want to make three brief points.

The intent of the bill in 1994 to 2004 was to dry up supply over time. The sunset had to be added. We came through the Senate with a bare margin, 51 votes on a motion to table. The sunset was critical to getting those votes.

Point two, gun manufacturers took the two characteristics test and crafted weapons to get around it, i.e., the thumbhole stock.

And the third point is that this is really an important issue of public policy, and these weapons can also, by virtue of their construction, be held at the hip and spray-fired without aiming, and that makes them just lethal, with the increased velocity, as you pointed out, in a rifle.

Chief Flynn, you are really a cop's cop. I really appreciate your frankness. I thank you for being here. The cities you served are very lucky.

And, Mr. Prosecutor, you have fantastic retention. I really thank you for your service to our country.

Oh, Senator Blumenthal, take some extra time. I am so sorry.

Senator BLUMENTHAL. Madam Chairman, thank you. I know that in the Senate, freshmen Senators are supposed to be seen and not heard. But I am happy to be heard today.

[Laughter.]

Senator FEINSTEIN. You got it.

Senator BLUMENTHAL. I want to begin by thanking you, Madam Chairman, for your courage over many years, your consistent advocacy for this assault weapon ban. You have been so stalwart and strong. And the simple blunt fact is that this issue was thought to be politically untouchable 2 months ago. We would not be here today without the horrific Newtown tragedy.

I want to begin by asking my fellow citizens of Connecticut, most particularly the members of the Newtown community, Sandy Hook Promise, the Newtown Action Alliance, as well as the families who had victims to please stand so that we can thank you publicly for your courage and your strength in this extraordinary historic moment. Thank you.

Senator FEINSTEIN. Let us give them a round of applause.

[Applause.]

Senator BLUMENTHAL. I want to thank my colleague—my colleague Chris Murphy was here earlier. He had another hearing so he had to leave, but he has been a very active member of this team. You know, there was extraordinary evil in Newtown on December 14th of last year. But there was also extraordinary heroism, and part of it was, in fact, the law enforcement officers who went to the school, charged into the building, and thereby prevented even more deaths because the shooter turned the gun on himself when he knew that police were on the scene.

So I want to begin by thanking our law enforcement officers who are on the front lines every day. We have two of our most distinguished in the country. Thank you for being here, U.S. Attorney Walsh and Chief Flynn, and for your eloquent and powerful testimony that.

And it was also the courage and strengthen of the Newtown community that has rallied together and taken an active advocacy position in favor of these kinds of measures.

And the statisticians and the Ph.D.s and the lawyers may debate the numbers, but the second simple blunt fact is that some or all of those 20 beautiful children and 6 great educators would be alive today if assault weapons has been banned along with high-capacity magazines. And some of the victims in Tucson would be alive today, including 9-year-old Christina-Taylor, as Captain Mark

Kelly testified so powerfully just a short time ago in the place where you are sitting now.

The fact is that we need a comprehensive strategy. Nobody here is saying that an assault weapon ban or prohibition on high-capacity magazines will end gun violence, but we are choosing to light a candle rather than curse the darkness. And the fact is, Chief Flynn, I would agree with you totally that what we see in our Nation is mass murder committed as a result of gun violence. I differ only to say that it is not slow motion. In fact, it is escalating. It is rapid-fire mass murder. Nineteen hundred people have been killed since Newtown as a result of gun violence.

And so I want to begin by asking you, Chief Flynn—and I think you have alluded to it—what is it that leads you to feel the men and women on your force are outgunned by these assault weapons?

Chief FLYNN. For the first 20 years of my police career, I carried a six-shooter, and that was plenty. That was the standard weapon for American law enforcement for over 100 years. And in the last 20 years, we have been in an arms race. I only the year before last had to start arming my officers with assault weapons in the cruisers to start to protect themselves. That is not where we were pre-Brady.

Senator BLUMENTHAL. And, in fact, their body armor will not protect them against assault weapons at close range, will it?

Chief FLYNN. No. We have to constantly upgrade the body armor and offer them the opportunity to wear metal plates. You know, our challenge—if I may take one moment, I had the opportunity of—on September 11, 2001, I was the police chief in Arlington, Virginia. That is where the Pentagon was. And what I learned that day, that if this country takes 3,000 innocent victims, it takes major steps to alter itself. And nobody has boarded an airplane the same way since. That weapon of mass murder is no longer used in this country because we have taken steps to keep it out of the hands of those who would kill us.

Now, I have wondered frequently in the last decade how many people have to get murdered in a mass murder for it to be enough. I have been wrong time after time after time. But I am a grandpa, I have got little kids at home. Is 20 babies enough to say these implements should not be so easily distributed? That is what we are asking for. When was that gun bought?

[Applause.]

Senator BLUMENTHAL. I know that the Chairwoman will perhaps indulge me one more question.

Senator FEINSTEIN. I will.

Senator BLUMENTHAL. You know, I am a law enforcement guy, too. I was a State law enforcement person and had your job, United States Attorney Walsh, in Connecticut some years ago. And I want to say nobody in law enforcement ever thinks we are doing enough. Nobody ever says, “Well, we can go home and stop trying to do better.”

So as much as we may agree with you that the United States Department of Justice and local and State police forces are trying to enforce these laws as aggressively as possible, I think you need more resources and you need criminal background checks so that you can know, as Senator Graham and Senator Cruz said, how to

keep these weapons, all weapons, out of the hands of people who should not have them—criminals, domestic abusers, the severely mentally ill.

Would you agree that the criminal background check expansion to private sales as well as possibly ammunition sales are a way to enforce the existing laws—they are on the books right now, that can be enforced better so that you know before those weapons are purchased, along with trafficking prohibitions, that we can keep those guns out of the hands of people who should not have them?

Chief FLYNN. The majority of my illegal firearms are bought legally, not stolen. They are either bought through straw purchasers or they are bought outside of the regular licensed firearms dealers. Six of my officers were shot with guns that were legally bought from the same firearms dealer. That is intolerable. So, obviously, the purpose of background checks is to keep guns out of the hands of criminals, not to create, you know, millions of additional prosecutions.

The point is those checks work, and if we can extend them to the gun shows, we can keep guns out of the hands of criminals as well as the criminally insane.

Senator BLUMENTHAL. And perhaps we can stop them from buying ammunition after they have those guns. Would you agree?

Chief FLYNN. Certainly.

Senator BLUMENTHAL. Thank you.

Would you agree, United States Attorney Walsh?

Mr. WALSH. Absolutely, Senator. I think those are critical steps that will help us, frankly, keep the American people safer.

In addition, I would note that after Columbine, the State of Colorado tightened up its own background check to close the so-called gun show loophole and also really to invigorate the extent to which records on mental illness came into the system, and that has proved to be effective. Of course, it cannot stop everything, as we saw last July in Aurora.

Senator BLUMENTHAL. Thank you very much.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator, and, again, I apologize.

This completes the panel—oh, excuse me. Senator, you had one question?

Senator GRASSLEY. One question for Mr. Walsh, to learn from the experiences in your State. On September 21, 2011, the ATF issued an open letter to all Federal firearms licensees regarding transfer of firearms and ammunition to individuals authorized by State law to use marijuana for medicinal purposes. This open letter states that users of medical marijuana, even if authorized by State law, are prohibited from possessing firearms or ammunition under 18 U.S.C. 922(g)(3) because they are considered unlawful users of controlled substances under Federal law. And then because your State recently passed Amendment 64, I come to this question—or three questions, but really dealing with just that subject. So I will give you all three.

Will you prosecute individuals who use marijuana in Colorado and possess firearms and ammunition as a violation of Section 922? Why or why not?

And, lastly, as the top Federal law enforcement officer in Colorado, you are charged with enforcing Federal law. Have you prosecuted anyone for violating Section 922 based solely upon medical marijuana use?

Mr. WALSH. Senator, with respect to the first question as to whether or not we would prosecute people involved with medical marijuana for possessing firearms, the answer is yes, we have. In fact, we have a case out of Boulder County in which an individual was actually engaged in a grow of marijuana and possessed a variety of weapons, including some very nasty things called "street sweepers," and we prosecuted that individual.

With respect to whether we would end up prosecuting individuals solely because they had a firearm and were a user of medical marijuana, a medical marijuana card, I think we would have to look at those cases individually before we made any decision to determine whether that was the right allocation of our resources. I say that in part because the guidance we have received from the Department is that, generally speaking, it is not the best use of our limited Federal resources to go after individual patients who may be using medical marijuana.

Senator GRASSLEY. Thank you very much for your answer.

Senator FEINSTEIN. Thank you very much. I would excuse this panel, and thank you very much.

I would ask the next panel to please come forward. Senator Blumenthal will introduce the first two witnesses.

Please take your seats. We would like to begin. Senator Blumenthal, at your pleasure.

Senator BLUMENTHAL. Thank you. Thank you, Madam Chairman, and again my thanks for having two of our witnesses from Connecticut: Dr. Begg and Neil Heslin. I do not know, Madam Chairman, whether you want to administer the oath.

Senator FEINSTEIN. I will. In the interest of time, I was going to—

Senator BLUMENTHAL. I would be happy to introduce them before, if you would like. Whatever you would like.

Senator FEINSTEIN. All right. If the witnesses would stand and raise your right hand, please? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Mr. HESLIN. I do.

Dr. BEGG. I do.

Professor JOHNSON. I do.

Mr. HARDY. I do.

Ms. ADAMS. I do.

Mayor NUTTER. I do.

Senator FEINSTEIN. Thank you. Please be seated.

Senator BLUMENTHAL. Thank you both for being here, Mr. Heslin and Dr. Begg. I am honored to introduce you to this Committee.

When I went to the Sandy Hook fire house on the day of the shooting within hours of its occurrence, I went as a public official, but what I saw was through the eyes of a parent. And I saw the aftermath and impact of unspeakable and unimaginable horror and evil. But there was also a lot of heroism that day, not the least from gentlemen like yourself and their families who were there—

in your case, Dr. Begg, to help save lives; and in your case, Mr. Heslin, eventually to learn about the loss of your son.

To introduce you first, Mr. Heslin, I know on December 14th you lost your son, Jesse, who was 6 years old and who attended the Sandy Hook Elementary School. I know that you would not want to be here right now. But I know also, as you have told me, and Dr. Begg has, from the beginning of this tragedy and as recently as Sunday night and yesterday, that you want to be here to try to make sure that Newtown never happens again. And I am grateful, and I know the Committee is, for your being here. We have much to thank you for, Neil, for being here today. Your courage is an inspiration to me and I hope will be an inspiration to this Committee.

Dr. Begg, I know you were born and raised in Connecticut, and you decided to go into medicine after your father passed away following a medical mistake. While studying at Johns Hopkins Hospital, you were voted the top resident, I understand, for community emergency room doctors, and during your residency there at Johns Hopkins, you also did a clerkship at the nationally recognized Maryland Shock Trauma Institute. And then you went to work at Fort Drum to oversee 800 doctors and 200 physician assistants at the Danbury Hospital, and you are currently president of the medical staff at Danbury Hospital. I know you were in Newtown that day at the Danbury Hospital where you were the ER physician on duty when some of the Sandy Hook children were brought to the hospital and to the emergency room. I thank you for your efforts on that tragic day and for testifying today.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you, Senator Blumenthal.

Mr. Heslin, welcome. We are very honored to hear your comments.

#### **STATEMENT OF NEIL HESLIN, NEWTOWN, CONNECTICUT**

Mr. HESLIN. My name is Neil Heslin. I am Jesse Lewis' dad. Jesse was brutally murdered at Sandy Hook School on December 14th, 20 minutes after I dropped him off.

This picture is a picture that was taken when Jesse was 6 months old. It was our first Christmas together.

That picture over there is a picture last Daddy's Day, 6 months before his death.

That picture up here is his class picture from last year. That picture was on the Port Jefferson Ferry.

Jesse was the love of my life. He was the only family I had left. It is hard for me to be here today talking about my deceased son, but I have to. I am his voice. I am not here for the sympathy and a pat on the back, as many people stated in the town of Newtown. I am here to speak up for my son.

There are many changes that have to happen to make a change effective: mental health issues, better background checks, bans on these weapons, bans on high-capacity magazines. They all have to come together, and they all have to work effectively. It has to be done simply. Common sense tells you that.

I watched that video this morning. That is a dangerous weapon, and anybody that can deny or argue that is not being honest.

Jesse was 6½ years old. His birthday was June 30th. In 2006 he was born. It was the happiest day of my life. The saddest day of my life was December 14th. It was the worst day of my life.

I waited in that fire house until 1 o'clock in the morning from 12:30 until I knew Jesse was confirmed dead.

Senator Blumenthal was there, Governor Malloy, the other Congressmen from Connecticut, along with the police and the first responders. I have a bond with them that will last a lifetime.

No person should have to go through what myself or any of the other victims' families had to deal with and go through and what the town of Newtown had to go through and is dealing with.

The morning of December 14th, we stopped at Misty Vale Deli. He got his favorite sandwich—sausage, egg, and cheese on a hard roll. And he ordered me one. He would always do that. I would get a coffee. Jesse would get what he called a coffee, but it was a hot chocolate.

We proceeded to the school. It was 9:04 when I dropped Jesse off by the school clock. Jesse gave me a hug and a kiss at that time and said, "Good-bye. I love you." He stopped and he said, "I love Mom, too." That was the last I saw Jesse as he ducked around the corner.

Prior to that, when he was getting out of the truck, he hugged me and held me. I can still feel that hug and the pat on the back. He said, "Everything's going to be okay, Dad. It is all going to be okay."

And it was not okay.

I have to go home at night to an empty house without my son. It is something that never should have happened in an elementary school. People argue about the Second Amendment. Well, the Second Amendment says "a well regulated militia," to bear arms, safe and free, freedom of state. It has not been well regulated, and it is not being well regulated.

This bill that Senator Feinstein has proposed I read over. It is not about taking the weapons from the owners of them. It is putting a ban on the manufacturing and curbing the sale of them. It is not hurting the sportsmen. It is not hurting the gun owners now.

I fully support the Second Amendment, and I fully support the sportsmen and the hunters. I grew up with firearms. I started skeet shooting with my father when I was 8 years old competitively. In my younger teen years, I was State champion. I achieved the level of marksmanship with rifles. I have a broad knowledge of weapons, including military weapons. I do not participate in shooting or hunting anymore. Times have changed in my life, and I had a young boy I devoted my life to.

Ironically, the same day as Jesse passed away, 5 days before that my mother passed away.

Jesse had an interest in the military. Jesse had an interest in guns, asked a lot of questions about them. Strange enough, the night before he perished, we were at Big Y. He was looking at a survival magazine or a gun magazine. In that magazine there were three weapons on one page. One was a Bushmaster, one was a Glock, and one was a Sig handgun. I had to go back the following day to look at that. But I quickly looked at it that night. It was an assault rifle and the two handguns.



He asked me about those weapons, and I explained them to him, what they were used for and their capability. The 223, it was a high-velocity, long-range cartridge. It was used by the military. And his response was, "Is it a weapon or gun that is used to kill people?" And I said, "Yes, Jesse, that is what it is used for."

Jesse had a BB gun. I got it for him for Christmas a year ago. I taught him gun safety. I looked over his back. And he was proficient with it, and he knew all the gun safety precautions. He could recite them to you the same way as I could when I was his age.

It just breaks my heart that something like that could happen in this country and in an elementary school. I walked past the Capitol this morning, the Capitol Police 3 feet from me when I walked by them. What is he holding? An assault weapon protecting our Nation's capital, protecting us today. And a weapon with similarity to that being a Bushmaster was brought into an elementary school in Sandy Hook, Connecticut, and killed 20 students and 6 educators.

I just cannot believe that that could happen. Those weapons were used on the battlefields of Vietnam. They were used in the Persian Gulf; they were used in Afghanistan and Iraq. The sole purpose is to put a lot of lead on the battlefield quickly. That is what they could do, and that was proof right there, that video this morning. They have the capability to be held and used to produce rapid fire.

I asked the question a month ago what purpose those served in civilians' hands or on the street. I have not received an answer yet, but they did blurt the Second Amendment. It was not about the Second Amendment. I defend the Second Amendment. And I want to see that upheld and regulated, and it has not been.

When that was written almost 300 years ago, we did not have these weapons we have today, and the technology. They has muskets and cannons. I think it was in 1934 when the ban was put on machine guns, and the regulation. We have not had a mass killing with a machine gun since. I feel these so-called assault weapons that have certain characteristics should fall in that category and be banned.

[The prepared statement of Mr. Heslin appears as a submission for the record.]

Senator FEINSTEIN. Thank you, Mr. Heslin. Thank you very much.

Dr. Begg. And then I will introduce the remaining four witnesses.

**STATEMENT OF WILLIAM V. BEGG, III, M.D., DIRECTOR,  
EMERGENCY MEDICAL SERVICES, WESTERN CONNECTICUT  
HEALTH NETWORK, NEWTOWN, CONNECTICUT**

Dr. BEGG. Chairman Feinstein, Senator Grassley, Senator Blumenthal, and Members of the Committee, thank you for the opportunity to speak and testify. My name is Bill Begg. I am a board-certified emergency room doctor, and I trained at the Johns Hopkins Hospital.

What is my inspiration for coming today? Well, I am the parent of three Newtown students. I am a grammar school track coach in Newtown. I am with a couple grassroots organizations, including

the United Physicians of Newtown and the Newtown Action Alliance. Our group of physicians is over 100 doctors from Newtown that all are on the same platform. Some are Republican, some are Democrat, but we all have the same platform about limiting assault rifles and gun violence.

I am the EMS medical director for Newtown that was in direct contact with all my providers in the field that day. I am a friend of some of the families that lost loved ones, and I was an ER doc that was on shift on December 14th.

So what is my goal? What is my goal in the next 5 minutes? My goal is to somehow convince you, Senators, that banning assault rifles and real gun control measures that you will hopefully enact will make a difference. Research since 1996 has been severely limited. I had to go overseas to look at some real data, some empirical data to see what the real answers are.

In Dunblane, Scotland, in 1996, a 43-year-old shooter got off 109 rounds. He killed 16 little children and teacher, and he injured another 27 kids and 4 more teachers.

In Australia, in the same year, a 28-year-old with an AR-15 assault rifle killed 35 people and injured another 23.

The damage caused by an assault rifle compared to a regular gun is horrific, and many of those folks do not even show up in my ER because their injuries are so bad, there is nothing salvageable. They do not even make it to my ER. At the end I have a video to show you.

What did those legislators do across the world, in Australia and the United Kingdom? They enacted real gun legislation. They banned assault weapons. Did the legislation work right away? No, actually it did not work right away. It did not. But where do they stand today in 2010? As far as mass murders go, in the U.S. we have had over 20 mass murders. In the United Kingdom, one. In Australia, zero.

Before 1996, in Australia, there were a dozen mass murders in the previous 20 years. And as far as gun deaths and empirical data, we have had over 30,000 deaths each year in our country. In Australia and the United Kingdom, as of 2010, with their gun legislation and the banning of assault weapons, they have each less than 300 deaths a year. That is 1 percent. Gun legislation and banning assault rifles, it takes a lot to come to fruition, but it works.

If you actually own a gun in your home because you think it is going to make you safer, let me give you some real stats.

There is something called femicide, ladies getting killed. Women are 5 times more likely to be killed by their spouse if there is a gun in the house. That is a real study.

I am sorry for being loud, but this is emotional for me.

If you want a gun in the house, you are 5 times as likely to die of suicide. And if you own a gun, you are 20 times as likely to die from unintentional gun death. Countries that ban assault rifles and have gun control measures do lower the chance of gun death for their citizens.

In summary, what I am asking you to consider is a ban on military-style assault weapons; a ban on high-capacity magazines, especially if they have more than 10 bullets; a ban on semiautomatic rifles; require background checks for all gun purchases; and please,

please, could we do some real gun research in this country? In this country.

What galls me is those who say let us really focus on mental health are the same ones who are saying, well, we need to have a conservative approach and balance the budget and cut programs. What are the first programs that are cut? Mental health.

So what I am asking you to do is not even—not even add programs. I am asking you to just not even cut the mental health programs that are out there already. Allow me as a medical doctor, when I see a patient and I talk to them about the risks of excessive alcohol or tobacco use or safe sex, morbid obesity, seat belts, texting and driving, can I please talk to them about the risk of gun violence? Please?

There is a public service announcement right now that says you are 23 times more likely to die if you are texting and driving. Why can I not have a public service announcement saying the same relative to assault rifles and gun ownership?

I am not against the Second Amendment. If you go through the proper channels, I do respect your ability to own a gun. But not an assault rifle.

I want to recognize the valiant efforts of the first responders from the greater Newtown area. Thank you for your service.

And to the families whose loved ones actually made it to the ER, we all tried our best.

To you lawmakers, my mom and my dad were both Connecticut State representatives, and I said to my mom, I said, “Mom, why don’t you think when it is so common sense, why don’t you think they will change?” And she said, “Well, you know, they have their party lines, and they have their lobbyists, and they may not be senior.” And I said, “Well, do you think this one time they will actually do us right?” And she said, “Yeah, I think so. I think this time they will.”

People say that the overall number of assault weapon deaths is relatively small, but you know what? Please do not tell that to the people of Tucson or Aurora or Columbine or Virginia Tech, and do not tell that to the people in Newtown.

[Applause.]

Dr. BEGG. This is a tipping point. This is a tipping point, and this is a public health issue. Please make the right decision.

Thank you for your time, and if there is extra time, there is a small video on the difference between injuries—there is on the difference between a gunshot with a handgun and an assault rifle. But thank you for your time otherwise.

[The prepared statement of Dr. Begg appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Doctor.

I will now introduce the following four witnesses:

Nicholas J. Johnson is a law professor at Fordham. He has held that position since 1993. He has published articles on the subject of firearms regulations and environmental law. Prior to Fordham, he practiced law as an associate with Morgan, Lewis and Bockius, served as vice president and co-owner of Westar Environmental Corporation, and was Of Counsel for Kirkpatrick and Lockhart. He

taught at two colleges as a professor of legal studies. He is the author of two books on gun ownership.

I will introduce David Hardy. He is an attorney in private practice in Tucson. He has litigated and authored friend-of-the-court briefs in several firearms-related cases. He spent 10 years as a career attorney with the Office of Solicitor for the United States Department of the Interior, where he represented the United States Fish and Wildlife Service. Prior to his service in the Government, he was assistant general counsel for the National Rifle Association.

Sandy Adams is a Representative elected in 2010 to represent Florida's 24th District as a United States Representative, where she served for a term of 2 years. Previously, she worked in the Florida State House of Representatives for 4 years and had served over 17 years with the Orange County Sheriff's Office as a deputy sheriff and investigator.

And, finally, Mayor Michael Nutter. He is the mayor of Philadelphia and the president of the United States Conference of Mayors. As the leader of the official nonpartisan organization of cities with populations of 30,000 or more, Mayor Nutter speaks on behalf of 1,300 mayors nationwide. Before he was elected mayor of Philadelphia in 2008, he spent 15 years on the Philadelphia City Council.

We will begin with you, Mr. Johnson. Welcome. Do you want to activate your mic? Thank you.

**STATEMENT OF NICHOLAS J. JOHNSON, PROFESSOR OF LAW,  
FORDHAM UNIVERSITY, SCHOOL OF LAW, NEW YORK,  
NEW YORK**

Professor JOHNSON. Thanks for inviting me.

First I should say that sitting through the last two pieces of testimony, I will just affirm the instinct that when one listens to the victims of events like this, the impulse is to basically give them anything they want, and I understand that impulse. And I guess what I would say to people who support the bill, which I have critiqued here, is that mine is a counsel of despair, unfortunately.

My testimony is drawn from an extensive analysis of this question that I published in 2009. My core point here is that the classifications established by Senate bill 150 are unsustainable under the lowest level of constitutional review, that they fail to meet even the rudimentary rational basis requirements.

To sustain the category of guns that the bill claims are exceptional and must be banned, we must compare that category to the baseline of guns that are deemed unexceptional, many of which are included in the bill. The characteristics that define the prohibited class are all objectively measureable, and by those objective measures, the classification I think is unsustainable, and I have detailed this in Appendix A, which includes the article that I mentioned.

The primary characteristic that drives the prohibited category is multi-shot capability. The AR-15, which we have talked about in detail, with its common 30-round magazine will fire thirty .22-caliber, typically 55-grain projectiles, one with each pull of the trigger.

Now compare guns that are in the non-prohibited class. Take the common repeating shotgun, either pump or semiautomatic. Hundreds of guns of this type are on the bill's list of prohibited firearms. There are tens of millions of guns of this type in the civilian

inventory. In 12 gauge configuration, with a 3-inch, 00 buckshot load, any of these guns will fire fifteen .33-caliber, typically 60-grain projectiles with a single pull of the trigger. There are a variety of other loadings that will push this calculation upward or downward, but this example makes the point.

Additionally, this broad category of repeating shotguns can be continuously reloaded without disabling the gun. That is an attribute that the prohibited class does not exhibit. So the downtime, while the shooter changes magazines, that has been offered as a justification for the bill's 10-round magazine limit is actually circumvented by this class of shotguns that are on the non-prohibited list.

Another claim that supposedly distinguishes the prohibited class of guns is that they are equipped with pistol grips or barrel shrouds, and those things it is claimed, contribute to un-aimed, spray firing, or firing a cloud of projectiles without aiming. This actually better describes shotgun technology. The shotgun actually does fire a cloud of projectiles that spreads as it moves down range.

Now, these basic points are confirmed by the United States Army assessment of whether the shotgun in battle is consistent with the laws of war. A version of this analysis appears in a 1997 article published in the *Army Lawyer*. Some excerpts I have included in my testimony.

The Army assessment relies centrally on an early analysis by Brigadier General Samuel T. Ansell, whose evaluation continues to form the position of the United States as to the legality of the shotgun in combat. General Ansell's critique was prepared actually in response to a formal complaint by the Germany Government in World War I, charging that the Model 1897 pump shotgun, then in use by U.S. troops, was so destructive that it violated the laws of war. General Ansell's response was this:

"The shotgun ... finds its class or analogy as to purpose and effect, in many modern weapons. The dispersion of the shotgun pellets is adapted to the necessary purpose of putting out of action one or more of the charging enemy with each shot of the gun; and in this respect it is exactly analogous to shrapnel shells ... or a machine gun discharging a spray of bullets.

The 1997 assessment goes on to describe a British analysis of the combat shotgun which reports that "To a range of 30 yards, the probability of hitting a man-sized target with a shotgun was superior to all other weapons." On this measure it is superior to the assault rifle—and this is the assault rifle as technically described that is fully automatic firing, an intermediate cartridge, and superior to the submachine gun firing a five-round burst.

When gauged against these objectively measurable characteristics, the rhetoric that defines the prohibited class in Senate bill 150 not only inaccurately describes the class, but more accurately describes guns that Senate bill 150 classifies as less dangerous and places on a companion list of good guns. That renders the bill, I am afraid, incoherent, and that renders the bill unable to pass rudimentary rational basis analysis.

My detailed testimony goes into far more depth with regard to other characteristics of this type.

My overall assessment here is this: Guns are dangerous. All of them are dangerous. As a class, they are exceptionally deadly, particularly when deployed against unarmed and defenseless people. And on that score, I fear that the conversation we have been having about this particular type of gun is a distraction from the broader issues.

[The prepared statement of Professor Johnson appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Mr. Johnson.  
Mr. Hardy.

**STATEMENT OF DAVID T. HARDY, ATTORNEY,  
LAW OFFICES OF DAVID HARDY, TUCSON, ARIZONA**

Mr. HARDY. Thank you, Madam Chairman and Members of the Committee.

I think Professor Johnson has ably demonstrated that S. 150 cannot pass rational basis scrutiny because it simply arbitrarily discriminates among different things.

I would point out in addition that S. 150 would mark the most extensive gun ban in the history of this Republic. The 1994 ban listed 19 brands of firearms that could not be made. S. 150 lists over 150.

The 1994 ban banned firearms with a pistol grip that protruded below the rest of the firearm. S. 150 simply bans any gun with a pistol grip. And I would point out that virtually every—the only reason I cannot say “every” is because I have not examined every one—but every rifle and shotgun, semiautomatic made today has a pistol grip. It is not a separate pistol grip. It is just the area that your hand fits around makes it more comfortable to fire. So essentially this would ban any semiautomatic long arm that has a replaceable magazine.

The categories seem to be focused mostly on style, as they say, “military style,” but the fact of the matter is no one would go to war with a semiautomatic AR-15 shooting one shot per trigger pull. They would go to war with an M-16 that fires fully automatic and three-round bursts.

The price of the creation of the assault rifle, which is fully automatic, the price for it was that they had to drop the power of the cartridge by 50 percent because you cannot fire a full-powered military round at full automatic without getting the heck beaten out of you by recoil. So in the case of the AR-15, we dropped the power of the military rifle from 2,400 foot pounds of energy to slightly over 1,200, a 50-percent decline, which is average for that type of thing. When you go back to semiautomatic, turn it into a semiautomatic, what you have is simply a firearm of half military power.

Then if we look at the various ban features, apart from the halving of the power, there is the pistol grip. There have been statements I have heard that the pistol grip is somehow meant to promote unaimed fire from the hip. That only happens in Rambo movies. The military would not be issuing firearms to people that are conducive to being fired from the hip without aiming because essentially you cannot hit anything in that mode. And if you stopped to think about the angle of the pistol grip, it would actually make

it harder to fire from the hip than from the shoulder, because military does not want you firing from the hip.

The threaded barrel, I cannot see any connection between a threaded barrel and use in criminal conduct. What could it be? If we talk flash suppressors, I can tell you I have personally verified with an AR-15 in a darkened range that there is no flash, even if you take the flash suppressor off. That is mainly for M-4s and M-16s where you are firing full automatic, you get the barrel nice and hot, and then you can see a flash.

I would agree with Dr. Begg on one issue, which I promised my friend Clayton Cramer to raise. Clayton has written a book on the deinstitutionalization of the mentally ill and essentially what a disaster it has been for this country. He cites studies indicating that about a thousand homicides a year are committed by people who have been diagnosed mentally ill and gone off their meds. I would agree with Dr. Begg, therefore, that we have to treat the mentally ill, especially the dangerous ones, get them off the street where they can be treated, and that we are not doing a fraction enough of this at the moment. We can either try to get the violent mentally ill out of commission, or we can try to create a world in which it is safe to have violent mentally ill people on the street. I suggest the latter is simply impossible a task.

I think that one of the arbitrary features of S. 150 is illustrated by a comparison of two firearms—the AR-15 and the Mini 14. Both shoot the same cartridge, the 223. Both take 20- to 30-round magazines. Both shoot at the same rate of fire, one shot per trigger pull. Both weigh about the same and are about the same length. The AR-15 is classed under the bill as one of the prohibited forms of firearm. The Mini 14 is listed specifically under the sections which exempt it from any possible ban. Yet the two firearms are functionally identical. The only difference is one of them has a wooden stock and the other has a plastic one.

I think, as Professor Johnson pointed out, to pass any heightened level of scrutiny, there has to be a relationship between the statute—a provable relationship between the statute and an important social goal, and it must not unnecessarily impact lawful exercises of rights. I think we can see that S. 150's categories have no relationship to criminal use and that they exempt or control firearms of exactly the same type.

I would point out one last thing, insofar as burdening rights. There was only one Adam Lanza. There was only one Seung-Hui Cho. But S. 150 attempts to deal with their cases, their violent cases, by regulating the other 300 million Americans' conduct of their—exercise of their constitutional rights. S. 150's arbitrary standards fail any test for constitutionality and, for that matter, for wise social policy.

Thank you.

[The prepared statement of Mr. Hardy appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Mr. Hardy.

Representative Adams, welcome.

**STATEMENT OF HON. SANDY ADAMS, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Ms. ADAMS. Thank you, Madam Chair. And before I begin, I would like to state that my thoughts and prayers go out to the families, first responders, and the community of Newtown.

I am here as a mother, grandmother, former deputy sheriff, and former legislator. This issue is not political to me, but it is personal.

I spent over 17 years as a law enforcement officer in Orange County, Florida, during which time I had the unfortunate experience of looking down the barrel of a rifle with the assailant's finger on the trigger knowing that if that trigger were pulled, I would not be here today. I have also experienced the fear that grasps you when the laser sight from a 9mm Desert Eagle puts a dot on you.

I tell you this so that you know that my comments here today are not based on any political motivation but on my personal beliefs and experiences.

As someone with a law enforcement background, I naturally consider whether a legislative proposal made under the banner of public safety would truly contribute to that worthy objective.

Concerning the proposal to ban a wide variety of semiautomatic rifles, shotguns and handguns, and ammunition magazines that hold 11 or more rounds, I think it is an easy question to answer.

When Congress approved the 1994 ban, it required that a study of the ban's effectiveness be conducted. That study found that "the banned weapons and magazines were never involved in more than a modest fraction of all gun murders."

Several years later, a follow-up study found that assault weapons were used in a particularly small percentage of gun crimes and that assailants fire less than four shots on average, a number well within the 10-round magazine limit imposed by the ban.

Given the outcome of these studies and the fact that the Nation's murder rate, which was already in decline prior to the 1994 ban, continues to decrease. Legislation that seeks to ban semiautomatic firearms and restrict magazine capacity will not address the root causes of America's violent crime problem or greatly contribute to public safety because it is not the lack of laws that is a problem. It is the lack of enforcement of existing laws.

Ten years ago, I ran for office because I watched as elected officials passed feel-good legislation without any regard for implementation and enforcement of such laws. As a law enforcement officer, I saw firsthand how difficult it was to convince State and Federal agencies to prosecute criminals for illegal gun possession or other crimes. The attitude of many of the prosecutors that I worked with was that these type of crimes were nuisance cases that were a drain on their resources. If we do not prosecute those who try to purchase firearms illegally or possess firearms illegally, then what good does it do to pass more laws?

In addition to enforcing already existing laws for prosecution, we must get a handle on how to keep firearms out of the hands of the mentally ill—a problem that my State of Florida has proactively addressed over the past 7 years.

In 2006, as a member of the Florida House of Representatives, I sponsored House Bill 151, which required the State to create and



maintain a database of persons adjudicated mentally defective or committed to mental institutions. The bill also required authorized law enforcement to disclose the collected data to Federal Governmental agencies and other States for use exclusively in determining the lawfulness of a firearm sale or transfer.

Two years later, another bill I sponsored expanded the use of the mental health database so that law enforcement could also check residents applying for concealed-carry permits and firearm licenses, and expanded the definition of “adjudicated mentally defective” to include those involuntarily committed to outpatient mental health treatment centers.

Both of these bills are excellent examples of laws that improve public safety by keeping firearms out of the hands of the mentally ill without endangering the freedoms of law-abiding gun owners.

We are at a turning point now. You have an opportunity to do what is right, and that may not be the easiest route. It is not time for feel-good legislation so you can say you did something, but it is time for a true discussion on the culture of violence and how to prevent more violent crime.

Thank you.

[The prepared statement of Ms. Adams appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much.

And our wrap-up speaker, the distinguished president of the Conference of Mayors, Mayor Michael Nutter of Philadelphia.

**STATEMENT OF HON. MICHAEL A. NUTTER, MAYOR, PHILADELPHIA, PENNSYLVANIA, AND PRESIDENT, THE U.S. CONFERENCE OF MAYORS, WASHINGTON, DC**

Mayor NUTTER. Senator Feinstein, all the Members of this Committee, I am Michael A. Nutter, mayor of the city of Philadelphia and president of the U.S. Conference of Mayors. I am honored to have the opportunity to appear before you today on behalf of the Nation’s mayors to discuss the importance of passing the Assault Weapons Ban of 2013. While we support several bills being considered by this Committee, we have made passage of the Assault Weapons Ban of 2013 our top priority.

Gun violence also has been personal for you, Senator Feinstein, and it has certainly been personal for me. The first police officer my city lost after I became mayor in 2008 was killed by an AK-47 or SK-47-type assault weapon when he responded to a bank robbery in a supermarket on a Saturday morning. I will never forget that day. A 12-year veteran of the Philadelphia Police Department, Sergeant Stephen Liczbinski was 39 years old. He left a wife and three children. Neither our police officers nor our citizens, and especially our children, should be confronted with these weapons on the streets of our cities, in our schools, in our movie theaters, in our shopping malls, in our places of worship, or in other civilian settings.

Gun violence has certainly also been intensely personal for Mr. Neil Heslin, who is sharing this table with us today. And on a personal note, let me point out it is my own personal feeling that some of the statements made today have certainly been dispassionately

disrespectful to Jesse and all others at Newtown and many other cities across this country.

[Applause.]

Senator FEINSTEIN. Please.

Mayor NUTTER. Mr. Heslin has been visited by every parent's nightmare. I am a father of two children. But with his help we can hope to secure legislation that will spare other parents of other young children from the unimaginable pain of life lost to a weapon designed for mass killing.

The December 14th tragedy at Sandy Hook Elementary School which killed 20 young children and 6 educators in Newtown remains incomprehensible to all of us. Too many times during the last year, mayors have expressed shock at mass shootings. Even more frequently, many of us most cope with the gun violence that occurs on the streets of our cities daily. Citizens have been killed on Philadelphia streets by handguns with high-capacity magazines as well as rifles and shotguns.

To me, and to America's mayors, these are weapons of mass destruction, and they are destroying our communities, our streets, our citizens, and our families.

The U.S. Conference of Mayors has been calling for sensible gun safety laws to protect the public for more than 40 years. Our call for a ban on assault weapons dates back to 1991. Mayors and police chiefs from cities of all sizes have worked together in this effort for many years.

We have done that because of the tremendous toll gun violence takes on the American people day in and day out. Every day in the United States of America, 282 people are shot, 86 of them die, including 32 who are murdered.

Every day—every day—50 children and teens are shot, and 8 of them die, including 5 who are murdered.

Gun violence disproportionately affects urban areas. Our Nation's 50 largest metro areas have 62 center cities, and those cities account for 15 percent of the population, but 39 percent of gun-related murders and 23 percent of total homicides.

Philadelphia, like many major cities, has struggled to control gun violence for years. However, despite our recent success at employing more effective policing techniques, deaths due to gun violence have not fallen. Let me use one set of statistics to illustrate this point.

Last year, in Philadelphia, the number of shooting victims was 1,282. This is actually down considerably from the year before and was the lowest number since we began tracking shooting victims in the year 2000. However, the number of homicide victims was up slightly—331, seven more than in 2011. How are these two statistics possible? The answer is that the homicide victims have more bullets killing them. Or, to put it another way, there are more rounds being fired and more intentional head shots. Victims are bleeding out because when you are hit with 8, 10, 12, or 15 shots, even if you do not hit a major artery, you will just bleed out in the streets or by the time you get to the hospital. So despite better policing, when someone is shot in Philadelphia or may other cities, sometimes they much more likely to die from the volume of rounds that hit them than anything else.

I would note that Pennsylvania does not have stringent gun regulations. When the city of Philadelphia adopted strict gun laws a few years ago, Our State Supreme Court struck some of those laws down. That is why we need Federal legislation. Cities alone cannot reduce gun violence. We are doing everything we can, but we are still losing the battle in many instances thanks to the proliferation of guns in our Nation.

Philadelphia's story is not unique. Mayors everywhere struggle with gun violence, using scarce city resources to fight it—resources that we should be using to educate our children, create jobs for our residents, and revitalize our cities.

I have with me this morning a letter originally sent just 3 days after the Newtown tragedy occurred and now signed by 212 mayors which calls on the President and Congress to take immediate action and make reasonable changes to our gun laws and regulations. Listed first among our recommended changes is the enactment of legislation to ban assault weapons and high-capacity magazines. I ask that you include that letter in the record of this hearing.

Senator FEINSTEIN. So ordered.

[The letter appears as a submission for the record.]

Mayor NUTTER. Let me conclude, Madam Chair. Mayors consider protecting the citizens of our cities our highest responsibility. We know that keeping our cities and our citizens safe requires more than passing sensible gun laws, including the assault weapons ban, but we also know that we cannot keep our cities safe unless we pass such laws. Your Assault Weapons Ban bill is common-sense legislation which will help us to reduce the number of people, including police officers, who are shot and killed in our cities and throughout our Nation. This legislation deserves a vote. This legislation deserves to be passed, by this Committee, by the Senate, and by the House so that President Obama can sign it into law.

I know it will take an act of political courage for many Members of Congress to support the Assault Weapons Ban of 2013, but the time for such political courage is now. How many more children, how many more police officers do we have to lose for our elected representatives to do the right thing? Please take action now on behalf of the most important special interest group in America—all Americans.

Thank you.

[Applause.]

[The prepared statement of Mayor Nutter appears as a submission for the record.]

Senator FEINSTEIN. Thank you. Thank you very much, Mr. Mayor. It is very much appreciated.

Mayor NUTTER. Thank you.

Senator FEINSTEIN. Dr. Begg, I would like to ask you this question: Did you actually treat Sandy Hook victims?

Dr. BEGG. Yes. I was in the ER that day when the victims came in.

Senator FEINSTEIN. Can you describe the kinds of wounds and the number of bullets in these small bodies?

Dr. BEGG. There is privacy rules in HIPAA that prevent me from actually detailing the type of wounds. But most of the victims actually did not come in. When we have such horrific injuries to little

bodies, that is what happens. They do not even make it to the hospital. The coroner from the State of Connecticut, when he did his review—and this is public knowledge—stated that each body had 3 to 11 bullets. When a child has 3 to 11 bullets in him and it is an assault-type bullet that explodes inside the body, it does not go through a straight line, it goes in and then it opens up, that is not a survivable injury.

So with respect to the families who lost loved ones and had them come into the emergency room and for HIPAA rules, I cannot describe the specifics. But hopefully I have at least painted a picture of what went on.

Senator FEINSTEIN. Thank you very much.

Did you have something that you wanted to show us?

Dr. BEGG. There is a very brief video, about 1 minute, and the point of the video is to highlight the difference between a bullet that goes into a body that is from a .22—and I am not a ballistic expert, but just like basically a handgun versus an assault weapon, and it just highlights the difference in damage inside of a person's body. So if we may.

[Videotape shown.]

Dr. BEGG. So, just briefly, the point, the first portion of the video represents like a .22 or a handgun, and so the bullet goes in on a straight-line track; whereas, the second video attempts to represent what—did represent what happens with an assault rifle-type bullet that goes in and basically explodes inside the body, the point is trying to cause more damage. In the military setting, in war, I guess that is the type of goal you have, but to have this in the civilian population is just—I just do not understand. So that is the point of the video.

Senator FEINSTEIN. Thank you very much. I appreciate it.

Senator Graham.

Senator GRAHAM. Thank you, Doctor. I definitely get where you are coming from. You see a lot of things that most people never see.

Mayor, what percentage of violent deaths involving a firearm in your city are a result of handguns versus rifles? Do you know?

Mayor NUTTER. Thank you, Senator. In 2012, unfortunately, we had 331 murders in the city of Philadelphia, and pretty consistently over the last 10 years or so, murder has been committed with a gun or other handgun or rifle-type of weapon. Usually anywhere from 82 to 85 percent of the murders in Philadelphia are committed with a gun.

Senator GRAHAM. But you do not know—just nationally, according to the 2011 numbers, 2.5 percent of homicides were committed with some form of a rifle. Do you think that is vastly different in Philadelphia? And I know you do not—

Mayor NUTTER. Well, I do have some numbers, Senator. I think the thing—so I am not going to talk about the national picture.

Senator GRAHAM. Yes, sir.

Mayor NUTTER. Of 331 murders in Philadelphia last year, 282 were committed with a handgun, 2 with a shotgun. This year we have had 31 murders, which is actually 37 percent down year-to-date compared to last year, 25 with handguns, 2 with a shotgun,

including, unfortunately, yesterday morning Jennifer Fitzpatrick, 37 years old, a mother of four, was killed by her ex-boyfriend in front of her 4-year-old with a 12 gauge shotgun after chasing her down the street and shooting repeatedly after her.

So gun violence certainly in Philadelphia and many of our major cities across the United States of America, I would only suggest, Senator, handgun, rifle, shotgun, dead is dead, and that is what being experienced in our cities all across America.

Senator GRAHAM. I could not agree with you more, but the reason we have hearings like this is to try to paint the picture for America of the problem we are trying to solve.

Mayor NUTTER. Right.

Senator GRAHAM. And I do not know what percentage of deaths are caused by rifles in Philadelphia, but I know nationally it is 2.5 percent.

Mr. Hardy, you have done some research on American ownership of the AR-15. Is that correct?

Mr. HARDY. Yes, sir.

Senator GRAHAM. Under the *Heller* definition, do you think it would be a commonly used or a weapon in common use at the time?

Mr. HARDY. Senator, I believe it would clearly be a weapon in common use at the time. The first bit of research I included was that approximately 22 percent of all American rifle production at the moment is devoted to the AR-15 platform—excuse me, that is the minimum—those are companies that only make AR-15s. Then you have got the other companies that make that plus some other arms.

Senator GRAHAM. Now, back to the background check, Chief Flynn I think had a very interesting observation, that he is not into chasing paper. And I guess my point is, if you have 76,000 people fail a background check and only 13 people plead guilty, I am not so sure we are sending the right signal to our citizens at large that we are really serious about you trying to get a gun illegally when you only have 13 guilty pleas out of 76,000. And here is a stunning number, Madam Chairman. Nineteen percent of the people who failed a background check were fugitives from justice. I mean, that is 13,862 people apparently in 2012 failed a background check because they were a fugitive from justice, and my point is that if we are only—we should be going after those folks. No matter how you feel about guns, we should be going after those folks.

From a background check point of view, this legislation, Mr. Hardy, as you understand it, would it require a background check if I sold the gun to my neighbor?

Mr. HARDY. I do not know that this bill specifically relates to that, but the proposals I have seen would say yes, you would be required to go through a dealer.

Senator GRAHAM. All right. Now, Ms. Adams, about self-defense, are you familiar with a case in Atlanta—I think it happened probably a month or two ago—where a person, a man, entered the house with a crowbar, had just gotten out of jail, the mother was at home with two twin daughters, I think, she took the daughters up to the second floor and hid in a closet, the intruder followed up and opened the closet door, she had a six-shot revolver, she was on

the phone with her husband, she emptied the gun, hit him five or six times, and he was able to get in his car and drive away. In a situation like that, would you object to the mother having a 20-round clip?

Ms. ADAMS. No. And I am familiar with it. I heard about it. Like many mothers and grandmothers, and as a law enforcement officer, the question I had was if he followed them upstairs, sought them out when he had full access to any valuables downstairs, what was his intent?

Senator GRAHAM. Well, we will never know what he was up to because it ended in a way where the family was safe, and we all agree that no one who is mentally unstable or criminal should have one bullet with any gun. And the whole point here is to try make sure that we balance keeping guns out of the hands of the wrong people without—also recognizing the Second Amendment.

I would suggest that in some situations six bullets is not enough for a person defending their family and one bullet in the hands of the wrong person is way too many, and that is what we are trying to accommodate here.

Now, one last thing, and I will try to wrap this up. There is a debate about self-defense, Mr. Hardy. If you had a lawless situation, let us say there is a natural disaster somewhere—unfortunately, these things happen. There are three homes: there is a home without a gun, there is a home with a shotgun, and a home with an AR-15. If there is a gang roaming around the neighborhood, what home do you think is best protected in a situation like that?

Mr. HARDY. I would say in that situation, Senator, the AR-15, the one with the AR-15. But you do not even have to go to a hypothetical. I have been in a situation where you needed—anywhere along the border. I live about 60 miles from the Mexican border. I was within 5 miles of the border with a rancher working on a court case. The rancher had a pistol, his wife had a pistol, I had a pistol, and they had an AR-15 in the car, and I felt distinctly underarmed. I mean, we only had one. If you encounter a drug cartel gang coming through, you are going to need more than that.

Senator GRAHAM. And I would just end this by saying that Vice President Biden has made the case—and I think he is very sincere—to his wife that if you live in a wooded area, you have got a double-barrel shotgun, to ward off the bad guys go outside and fire a couple shots. And he also made the case to a gentleman from California that if there is a natural disaster, the shotgun is the preferred weapon over the AR-15 for self-defense. And I would just say that reasonable people can disagree on that.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you, Senator.

We must give up this room at 1:30, and we have three additional Senators who would very much like to ask questions. So I would like to try to keep the timeline.

Senator DURBIN.

Senator DURBIN. Thanks, Madam Chairman. I have listened to the arguments on the other side at several hearings, and we heard them articulated specifically by one of the other Senators in the earlier panel. And he said, “Let us not rush into this too quickly.”

Two years ago, a member of the United States House of Representatives, one of our own, was shot point-blank in the face in Tucson, Arizona. We did not even hold a hearing on that. "Do not rush into this too quickly."

When you look at what is happening in city after city across the United States, we are not rushing into this too quickly. We are coming in too late for a lot of these victims. So I disregard that immediately.

The second and third point made by some arguing against this effort, laws are not going to solve all the problems, and many people will just disregard whatever we do. Well, I think we all can see that no law is going to solve all the problems, and we realize even today people are speeding on highways despite laws saying they should not. Does that mean we do not try, we do not make an effort at this?

But the thing that bothered me the most was the argument is we have to take care and be careful to protect the rights of law-abiding citizens. To protect the rights of law-abiding citizens.

Mr. Heslin, I walked into the room here when that video was on, and there were people up there using AR-15s, spraying targets with bullets. And flashed on the screen right after one of them was the word "Fun." And I thought about that. And I thought about your rights and Jesse's rights as a law-abiding citizen to be safe, to be safe in a schoolroom in Newtown, Connecticut.

What about the rights of the law-abiding citizens who wear uniforms every day, the men and women in law enforcement who get up and put their lives on the line for us? What about their rights? Do they not have rights at least equal to these rights under the Second Amendment? I think that is what *Heller* said. *Heller* said this is not an absolute right. And, sadly, Professor Johnson, I have been through law schools a long, long time ago, and law professors can really kind of dance around the top of a head of a pin. But when I listened to you and Mr. Hardy describe the Second Amendment, it is a suicide pact, because by your definition what has become common in America is unacceptable in a civilized country.

[Applause.]

Senator DURBIN. What has become common in——

Professor JOHNSON. I made a very different point, Senator.

Senator DURBIN. I will tell you what, the point I want to make is this: If it is common in America to have a military assault weapon with a 100-round magazine, if that is common for self-defense in America, God save this country.

Professor JOHNSON. I made a point about irrational classifications.

[Applause.]

Professor JOHNSON. Senator, could I respond?

Senator DURBIN. Please do.

Professor JOHNSON. My point was actually that this legislation will make things worse on the measure of people who support it; that is, it cannot be sustained ultimately. The Supreme Court will look at these classifications and——

Senator DURBIN. So let us read what the Supreme Court said. Let us read what they said, Professor——

Professor JOHNSON. Can I finish?

Senator DURBIN. Let us read exactly what they said. They said that we—the Court held in *Heller* that the Second Amendment preserves access to firearms in common use and not dangerous or unusual—

Professor JOHNSON. And that last piece is exactly my point.

Senator DURBIN [continuing]. Or the purpose of self-defense—

Professor JOHNSON. If it turns out that you—

Senator DURBIN. Excuse me, sir. Are you arguing that the AR-15 that we just saw demonstrated there is a common weapon, not dangerous or unusual, used for the purpose of self-defense? Is that your argument?

Professor JOHNSON. That is not my argument, actually, and—

Senator DURBIN. Well, then, I can just tell you, you have been excluded by *Heller*. Please respond.

Professor JOHNSON. The point of this analysis—and I conducted this in 2009, before this issue arose—was that there is a necessity for creating a category of exceptionalism. If you claim that the AR-15 is exceptional, you have to show that its characteristics are not duplicated by items or guns that are in your other category of allowed weapons. And my point about the shotgun was that all of the claims that are made about the exceptional capacities of the AR-15 are better illustrated, better demonstrated actually by the shotgun. And if you go before the Supreme Court with that, what you will have ultimately is a piece of legislation that really just generates more demand for the very type of gun that you are trying to ban—

Senator DURBIN. Professor—

Professor JOHNSON. And ultimately you are going to have the same failure—

Senator DURBIN. Professor, I am sorry to cut you off.

Professor JOHNSON. That you had in 1994.

Senator DURBIN. My time is running out, and I know lawyers and Senators can speak at length. And I would just say this in conclusion: I believe this Chairman has made a good-faith effort. If you take a look at the number of weapons that are an exception to her categories here, there is no law-abiding sportsman or hunter or person who wants a gun for self-defense who will be left unarmed under the Second Amendment in Illinois or any place in the United States.

Professor JOHNSON. Those guns are actually more deadly than the AR-15—

Senator DURBIN. Excuse me, sir. Excuse me—

Professor JOHNSON. That is the point.

Senator DURBIN. The point I am making here is there is ample opportunity for applying the Second Amendment, and the *Heller* Court said we can be reasonable in drawing these standards.

And the last point I will make, Representative Adams, this is not “feel-good legislation.” I am sorry you used that phrase in your statement and testimony. I do not feel good about being here today. Mr. Heslin does not feel good about being here today. We are trying to make this country safe, and we are giving our—

[Applause.]

Senator DURBIN [continuing]. Best efforts to—



Ms. ADAMS. Senator, I understand, as someone who has a husband on the wall at Judiciary Square. But I also understand that the criminals by their very definition do not obey the law. So when you take away the guns that people have to protect themselves, law-abiding citizens are left unarmed.

Senator DURBIN. I am sure you will now support a universal background check to keep the guns out of the hands of criminals, will you not?

Ms. ADAMS. No, sir, because that is a flawed system also. If you want to fix that system first, I would love to have an opportunity to discuss that with you.

Senator FEINSTEIN. Senator Franken.

Senator FRANKEN. Thank you, Madam Chairwoman. I want to thank all the witnesses for being here today.

Mr. Heslin, we met a few weeks ago. I want to thank you for being here, for sharing your story. I read your testimony. Jesse sounds like a remarkable—he was a remarkable young boy. I read in your written testimony that the last words he said were, “Run” or “Run now.” The witnesses are disputing whether he said, “Run” or “Run now,” and that he was shot—

Mr. HESLIN. Jesse was shot two times in the head. One bullet grazed his temple, the side of his head. That was not the fatal shot. Jesse was one of five students in his class that was killed, and the two—the teacher and the teacher’s assistant. Ten of those students survived the protection of Vicki Soto, her actions, and it was stated by several of the surviving students that Jesse yelled, “Run. Run now.”

Senator FRANKEN. And it was not in his back. He was coming to stop—

Mr. HESLIN. Jesse’s fatal shot was in his forehead. It went in right at his hairline, exited directly behind that. Jesse looked that coward Adam Lanza in the eyes, saw his face, and he looked at the end of that barrel. Jesse did not run. Jesse did not turn his back. That was the fatal shot that killed Jesse.

Senator FRANKEN. I just want to thank you for your courage to be here in spite of how painful it is, and I know that all Minnesotans have you and your family and all the families that are here in their prayers and in their thoughts. We are just trying here to do what we can do to save lives.

We have heard—and we just heard it again; I talked about this in my opening statement—about these hypotheticals, imagine this, imagine that. Thus far, in the record, I have not seen one example of where an AR-15 is used for self-defense.

Now, I have been asked to imagine it. I have been asked to imagine hypothetical situations, and I can. But I have not heard one example on the record. This is our third hearing. So what we really are trying to deal with here is reality, what is real.

And, Mayor Nutter, you are a mayor. As I understand it, police are more often targeted by assault weapons and are the victims of assault weapons than other people. What is the reality?

Mayor NUTTER. Senator, thank you. First of all, this idea that these weapons are for self-defense, based on our experience, is completely absurd. They are self-offensive weapons. That is what you use them for, because you are on offense. There are certainly in-

stances and there will be the unusual situation that someone can pull out from wherever they want to pull it out from, and certainly 2 weeks ago, a guy came in to rob a store. The owner was in the back. The guy pointed a gun at his wife. He pulled off a round, and the owner shot the individual with his gun. He did not have an AR-15. He had whatever kind of weapon he had, but it was not one of those.

And from time to time, these kinds of things happen. But what we see on the streets, when Sergeant Stephen Liczbinski was shot with that assault-type weapon, it almost cut him in half. His fellow officers had to drag him and place him in a car and rush him to the hospital. I was in that hospital with his family, holding his wife, talking to his kids, and saying to them, "I am sorry." He did not make it.

Moses Walker, another Philadelphia police officer, just finished his tour of duty, 6 o'clock or so in the morning.

This is an armed, trained Philadelphia officer. But two guys got a jump on him and shot him with an automatic weapon. I had to talk to his mother about that.

Patrick McDonald, shot multiple times with a weapon, with the person standing over him. Fortunately, a Philadelphia police officer responding to that call dealt with that individual, after having been shot in the hip by that person, knocked down, and jumped back up to deal with that criminal.

That is what goes on. That is the reality. This is not theory. This is not a class. This is not a case study. People die. That is what happens. I go to every one of those hospital scenes. I have got mothers without their sons who serve us, wives without their husbands. That is the reality of what is going on. And no one—and I have been to a few hearings myself, Senator. No one has ever been able to explain why a civilian should have a military-style assault weapon for anything other than the military or law enforcement. I have never heard a legitimate explanation.

[Applause.]

Senator FRANKEN. Thank you, Mr. Mayor.

Mayor NUTTER. Thank you, Senator.

Senator FRANKEN. Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you, Senator Franken.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chair. My thanks to all the witnesses who are here today for your testimony.

Dr. Begg, my objective and I believe the objective of many of my colleagues here today is to show that your mom is right. This time is different. This time we will do something. And the reason it is different is that Newtown changed America. It changed me. I know it changed you and others who are here today and many of my colleagues. So I want to thank you for being here.

And, Mayor Nutter, no city can do it alone. No city can stop gun violence alone because our city borders are porous to illegal trafficking, and our State borders are as well. And that is why Senator Durbin and I and others have led the effort to stop illegal trafficking because a national standard and national protection are absolutely required.

Mayor NUTTER. Thank you, Senator.

Senator BLUMENTHAL. Let me just say to all of you, you know, there has been a lot of debate here about statistics and numbers. The simple fact is we do not have enough research on gun violence in this country, and part of the reason is that opponents of gun violence protection have placed restrictive constraints on the research that can be done by Federal agencies in collecting and analyzing research about gun violence. Research that could be done by the CDC and the NIH has been barred by restrictions placed by the Congress of the United States.

So let me ask every member here: Do any of you feel that we have enough research that we should not do any more on the issue of gun violence? Dr. Begg. I am asking whether anybody disagrees that we need more research.

Dr. BEGG. I agree we need more research. This is a public health issue. Thirty thousand people a year die. We give resources to—there are four—the top four reasons you are going to die: either heart attack, stroke, cancer, or trauma. And folks who have cancer and stroke and heart attack, there is a lot of research. But there is not the research—there are just anecdotes. But the data that is out there is clear that if you own a gun, you are 5 times as likely to die from suicide, or a lady, you are 5 times as likely to have your partner kill you. So we need more research rather than anecdotes.

Senator BLUMENTHAL. Professor Johnson, you know, I have argued some cases in the United States Supreme Court, in fact, defending State statutes in our State Supreme Court. I defended our assault weapon ban in Connecticut, and won. It was upheld. The vast majority—in fact, I do not know of any court differing with the rulings made by Federal courts on the assault weapon ban that existed before 2004—upheld it. Do you know of any decision by a United States district court that strikes down an assault weapon ban?

Professor JOHNSON. To make a distinction between the pre-*Heller* world and now, so—

Senator BLUMENTHAL. Well, let me just ask the first question. Do you know of any decision striking it down? Do you know of a letter that was written by 50 constitutional law professors, including libertarian and conservative intellectuals like Robert Epstein, Eric Posner, Charles Freed, from the top law schools of the country, that say that restrictions on the manufacture and sale, and I am quoting—and I ask that this letter be put in the record, Madam Chairman.

Senator FEINSTEIN. So ordered.

[The letter appears as a submission for the record.]

Senator BLUMENTHAL. Restrictions on the manufacture and sale of high-capacity ammunition magazines and assault weapons are also consistent with the Second Amendment. Are you aware of that letter?

Professor JOHNSON. I am aware of that letter, and I know many of the folks on that list, but I would venture that most of the people on that list have not spent more than a couple of hours thinking about this issue. I have spent—

Senator BLUMENTHAL. Well, I am sure they would differ.

Professor JOHNSON. I have spent decades on this, and the assessment that I presented—

Senator BLUMENTHAL. I understand you have spent decades——

Professor JOHNSON. In 2009——

Senator BLUMENTHAL. Let me just ask another question——

Professor JOHNSON. Is one that I would urge you to read.

Senator BLUMENTHAL. I am sure they would differ on the amount of time they spent thinking about this issue before they signed the letter and——

Professor JOHNSON. Most of them have not published on the issue.

Senator BLUMENTHAL. Okay. Well, I will let you settle the issue of their credentials academically and——

Professor JOHNSON. It is not about their credentials. It is about whether they have thought this through.

Senator BLUMENTHAL. Okay. You know, with all due respect, Professor, in the arguments I have done before the United States Supreme Court defending State statutes and sometimes the action of State officials, the first two propositions out of my mouth were, number one, the courts have a responsibility to deem constitutional, to presume constitutional valid acts of the legislature; and, number two, legislatures are not required to solve all of the problem it wants. They can take incremental steps towards solving the problem. And I would submit very respectfully that the rational basis test, that is, whether an assault weapon ban and a prohibition on high-capacity magazines is rationally related to the end of preventing gun violence is sufficiently established by the testimony we have had here today, and that a decision by a court striking down the statute that has been proposed would be deemed constitutionally incoherent.

You have used that word “incoherent”——

Professor JOHNSON. Could I just respond?

Senator BLUMENTHAL. Well, you will be given an opportunity to respond, but normally in hearings we allow everybody to finish.

Professor JOHNSON. I am sorry. Excuse me.

Senator BLUMENTHAL. Then you will have a chance.

You have used the word “incoherent” to describe the legislation that has been proposed here. I think that is, number one, disrespectful to the Committee; but, number two, I think it is just plain wrong. But, number three, if you have suggestions for how to improve it—and this goes for any of the members of this panel—certainly we would welcome them because our ultimate objective, which I hope you share, is to help save lives, the kind of carnage that has been described so eloquently by Mayor Nutter and Chief Flynn and United States Attorney John Walsh, not to mention by Neil Heslin and Dr. Begg based on their personal experience. And as many articles as you and Attorney Hardy may have written, I do not think you have had the personal experience firsthand of seeing how dangerous—that is the word used by our United States Supreme Court in *Heller*—how dangerous these weapons are. And my hope is that perhaps you will be more supportive, because I think America is on our side on this issue because America knows this time is different.

Professor JOHNSON. Could I respond?

[Applause.]

Senator FEINSTEIN. Yes, you may.

Professor JOHNSON. Senator, first, we are not on different sides. The thing that bothers me most about the debate is that it turns us against one another. We are all trying to figure out how best to be safe. My explicit testimony referenced the Army Joint Service Combat Shotgun Program Report, and my point was, with respect to the incoherence, that the claims that were being made by the Committee and others that justified the prohibited category were better descriptions of guns in the non-prohibited category, and the Joint Service Combat Shotgun Program Report shows that.

That is the incoherence that I am describing, and that kind of incoherence, that is, a classification whose justifications will not hold up, is the point of the rational basis review issue that I mentioned.

The other thing to point out about the *Heller* decision is that it requires something far more than simply rational basis; that is, it is not an automatic deference to whatever the legislature does, because now what we are talking about is a constitutional right. So what we end up with ultimately is the Supreme Court potentially looking or some court looking at this question, making a determination about whether these distinctions, whether the classifications between the AR-15, et cetera, and all of the things that are on the good-gun list, whether those classifications are rational. And if the Court ends up saying, no, they are not, then what you will have is a piece of legislation that has accelerated in a dramatic way the purchases and the number and inventory of the very guns that you are trying to eliminate. And that seems to me to be a kind of unintended consequence that people should have an appreciation for.

Senator FEINSTEIN. Thank you very much. If I may—

Senator BLUMENTHAL. Thank you, Madam Chairman. I recognize that we will be evicted from this room, but I am sure that we will continue this conversation, and I hope it is continued constructively with that comment and helping to prevent gun violence and the kind of massacre that we saw in Newtown.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator Blumenthal. Senator Franken, thank you for staying throughout this.

I want to just say a couple of things. I drafted or my staff drafted the earlier legislation in 1993, I guess we did it in 1994 to 2004. I believe it did make a difference. I believe it did just begin to dry up the supply. I think it will be judged—this piece of legislation—constitutional. The prior piece of legislation went through the Fourth Circuit, the Sixth Circuit, the Ninth Circuit, and the D.C. Circuit, and it was sustained everywhere.

So even with *Heller*, I see no really regular use of an AR-15, a common use in society. It may be a small group of people that use it for target practice or, God forbid, if they use it for hunting, they are not much of a hunter. But the irreparable damage that is done to bodies from this weapon and other high-velocity rifles that tears people's bodies apart I do not know why as a matter of public policy we cannot say they do not belong.

Is this legislation perfect? No. Would I welcome help? When I did this in 1993 and 1994, I said to the NRA, "If you have suggestions,

give them to us.” Nothing. I would say that again. If you have suggestions how to improve this, give us the suggestions.

I believe that the American people are for, as a matter of public policy, saying that weapons designed for war do not belong on the streets of our cities.

To Mayor Nutter, I became mayor a long time ago, in 1978. When I became mayor, the common carry for a police officer was a .38 revolver.

Mayor NUTTER. Right.

Senator FEINSTEIN. And it was ratcheted up and ratcheted up.

Mayor NUTTER. Yes.

Senator FEINSTEIN. And then one day in Los Angeles, the police were outgunned in a robbery. They had to break into a gun store to get guns that were sufficient to meet the test.

Mayor NUTTER. Right.

Senator FEINSTEIN. So it has been the ratcheting up of weapons—

Mayor NUTTER. It keeps going up.

Senator FEINSTEIN [continuing]. That go through society and have an unparalleled impact. Sandy Hook is an example of the unparalleled impact—to families, to children, to teachers, to young women who are out there defending their students. It is hard for me to understand how anybody can defend that, candidly.

And I just want to say, the courage that it took for people from Sandy Hook to be here today, I want to say thank you. And, Neil Heslin, I want to say thank you to you. With a little bit of help from the people of America, we might even be able to pass that. It is an uphill job all the way, but I believe we are right, you believe we are right, and we will continue to fight.

So I thank all of you for being here. It is very much appreciated. The hearing is adjourned.

[Applause.]

Senator FEINSTEIN. I will leave the record open for statements, and the two letters from Senator Grassley will be entered into the record.

[The letters appear as submissions for the record.]

Senator FEINSTEIN. Thank you very much.

[Whereupon, at 1:28 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the  
Senate Committee on the Judiciary

On

“Hearing on the Assault Weapons Ban of 2013”

Wednesday, February 27, 2013  
Hart Senate Office Building, Room 216  
10:00 a.m.

### Panel I

John Walsh  
United States Attorney  
District of Colorado  
United States Department of Justice  
Denver, CO

Edward Flynn  
Chief  
Milwaukee Police Department  
Milwaukee, WI

### Panel II

Neil Heslin  
Newtown, CT

Dr. William Begg  
EMS Medical Director  
Western Connecticut Health Network  
Newtown, CT

Nicholas Johnson  
Professor of Law  
Fordham Law School  
New York, NY

David Hardy  
Attorney  
Law Offices of David Hardy  
Tucson, AZ

The Honorable Sandy Adams  
Former United States Representative (R-FL-24)  
Orlando, FL

The Honorable Michael Nutter  
Mayor of Philadelphia  
President, U.S. Conference of Mayors  
Philadelphia, PA



## **Department of Justice**

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STATEMENT OF

JOHN F. WALSH  
UNITED STATES ATTORNEY FOR THE  
DISTRICT OF COLORADO

BEFORE THE

COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

FOR A

"HEARING ON THE ASSAULT WEAPON BAN OF 2013"

PRESENTED ON

FEBRUARY 27, 2013



**Testimony of John F. Walsh  
United States Attorney for the District of Colorado  
United States Department of Justice  
United States Senate Committee on the Judiciary  
February 27, 2013**

Senator Feinstein, and Members of the Judiciary Committee, it is a privilege to appear before you today on behalf of the Department of Justice. As the United States Attorney for the District of Colorado, I am pleased to speak with you about the Department of Justice's views on limiting gun violence and protecting the American public by restricting access to dangerous military-style assault weapons and high-capacity magazines. These are common sense, constitutional measures that a majority of Americans have supported for years, and now, more than ever, want to see reinstituted. Although the Department of Justice does not yet have a position on any particular legislative proposal, we are confident that renewed restrictions can be implemented in a manner that enhances public safety without interfering with the constitutional rights of every law-abiding American citizen. On behalf of the Department of Justice, I want to thank you, Senator Feinstein for your tireless efforts to formulate and introduce legislation to address gun violence in our country.

Colorado, like the rest of the Rocky Mountain West, has a long and storied history of gun ownership, one steeped in frontier tradition, and based on the needs of the public for self-defense, hunting, and sporting purposes. Given this powerful tradition, we in Colorado place great stock in the Second Amendment to the Constitution. But at the same time, Colorado has in recent years seen gun violence tragedies on a scale most Coloradans would never have dreamed possible. In the Columbine High School tragedy of April 1999, and just seven months ago in the Aurora Theater shooting in July 2012, Coloradans have been profoundly shaken by senseless mass murders. The question before us, then, is how to balance our respect for the Second Amendment with the need to protect Americans by reducing and preventing gun violence, and mass shootings in particular.

The horrific events in Aurora, at Sandy Hook Elementary School in Newtown, Connecticut, and too many other locations in recent years have chillingly reminded us that those intent on inflicting mass casualties have ready access to the tools they need to inflict maximum harm in a matter of moments: military-style assault firearms and high-capacity magazines. As we are all now too painfully aware, these firearms and magazines are both lawful at the federal level and widely available. Yet common sense tells us that the combination of military-grade firearms with magazines capable of holding 20, 30, or even 100 rounds of ammunition simply is not consistent with public safety. Similarly, common sense tells us that these types of firearms and magazines are not needed for sporting or self-defense purposes. Especially in light of the incredible proliferation of these weapons and magazines in recent years, we must act now to stem the tide of violence.

From the point of view of most law enforcement professionals, a perspective I share as a long-time federal prosecutor and sitting United States Attorney, shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. Law enforcement professionals fully understand that due to the large existing stock of these weapons and magazines, a prospective ban on new production, importation, and sales will not yield instant results, but we also understand that inaction is not the answer. My experience as a federal prosecutor has taught me that no single law will prevent every crime from occurring or protect every member of the American public. Implementation of a new ban on assault weapons and high-capacity magazines must be coupled with other measures as well: first, continued aggressive enforcement of existing firearms laws; second, enactment and implementation of new laws to prohibit firearms trafficking and to provide for universal background checks on private firearm transfers; and third, enhancement of the National Instant Background Check System (NICS) to include more complete and comprehensive information identifying persons prohibited from possessing firearms, such as records of convictions for felonies and crimes of domestic violence, and records of persons prohibited from having guns for mental health reasons. Helping to stop one incident from occurring or protecting one victim during a shooting rampage is reason enough to implement these common sense safety measures. As President Obama stated back in January, in calling on Congress to reinstitute and strengthen the ban on assault weapons and high-capacity magazines, “we won’t be able to stop every violent act, but if there is even one thing that we can do to prevent any of these events, we have a deep obligation, all of us, to try.”

#### **I. Assault Weapons Ban**

The types of weapons that the Department believes should be banned include firearms that were originally designed to be military implements, crafted to be as effective as possible at killing human beings. The key features of these weapons are the ability to fire at high velocities and to accept high-capacity magazines, thus allowing soldiers to concentrate fire on an enemy by rapidly expelling a large volume of bullets. The power, high rate of fire, and efficiency of these firearms is the reason they have become weapons of choice for mass shooters, criminal gangs, and drug-trafficking cartels. Restricting the availability of these weapons will not only help to prevent these destructive tools from being used by violent criminals and criminal organizations, it will also help limit the carnage that occurs when they are used against innocent civilians and law enforcement. As a society, we have a responsibility not only to protect the public, but also to protect police officers, emergency responders, and all those who place themselves in harm’s way every day to protect all of us.

One of the primary arguments against an assault weapons ban is the claim that the federal Assault Weapon Ban enacted in 1994 was ineffective. The Department recognizes that the 1994 ban resulted in certain manufacturers producing and selling firearms of equivalent functionality and lethality to the banned weapons. Nevertheless, we believe that current proposals under consideration substantially address the gaps in the 1994 statute and, if enacted, will be

considerably more effective. Moreover, the Department believes that the effectiveness of the 1994 ban has been significantly underestimated – in large part because it has been insufficiently studied. In fact, the leading empirical study of the 1994 ban, a 1997 report sponsored by the National Institute of Justice (“NIJ”), found that the 1994 statute was responsible for a 6.7 percent decrease in total gun murders. See, Jeffrey A. Roth & Christopher S. Koper, “*Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994*,” The Urban Institute (March 1997). The 1997 report also reached a conclusion that echoes tragically through the headlines of the past year: “[A]ssault weapons are disproportionately involved in murders with multiple victims, multiple wounds per victim, and police officers as victims.” *Id.* Moreover, in a 2004 follow-up report to the NIJ, the same researchers concluded that the use in crimes of assault weapons subject to the 1994 ban declined by more than two-thirds in the first nine years the ban was in effect. See, Christopher S. Koper, “*An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*” (June 2004).

These empirical findings on the 1994 ban belie claims that its provisions were ineffective. Moreover, anecdotal evidence indicates that when the 1994 ban expired in 2004, crimes involving assault weapons and high capacity magazines subject to its provisions *increased*, further underscoring the effectiveness of the ban. For example, a report by the Police Executive Research Forum in 2010 found that 37 percent of police departments reported an increase in criminals’ use of assault weapons, and a 38 percent increase in the use of these weapons with high capacity magazines holding more than 10 rounds, following the expiration of the ban. See, Police Executive Research Forum, “*Guns and Crime: Breaking New Ground by Focusing on the Local Impact*” (May 2010).

In hindsight, the Department believes that one of the primary limits on the effectiveness of the 1994 ban was its 10-year sunset provision. Given the pre-existing stock of assault weapons that were not subject to the 1994 ban, and unintended loopholes that allowed for the continued production of weapons with similar lethality to those that were the subject of the ban, the 10-year term of the ban was simply insufficient to realize long-term sustained reductions in violent crime involving banned weapons and magazines. The lesson for us today is that any ban or restriction on military-style assault weapons and high-capacity magazines must be permanent to ensure maximum effectiveness – particularly since the existing stock of these firearms and magazines has dramatically expanded since the ban expired in 2004. The Department of Justice does not advocate making it unlawful to possess those items already legally owned by our citizens and acknowledges that most of the impact of the new restrictions on assault weapons and high-capacity magazines will not be immediate. But we must start now and stay the course to address this most pressing problem.

## **II. High-Capacity Magazine Ban**

One of the most disturbing aspects of the recent mass shootings our Nation has endured is the ability of a shooter to inflict massive numbers of fatalities in a matter of minutes due to the use of high-capacity magazines. High-capacity magazines were defined in the 1994 ban as magazines capable of holding more than 10 rounds, and this is a definition the Department endorses. The devastating impact of such magazines is not limited to their use in military-style assault rifles; they have also been used with horrific results in recent mass shootings involving handguns. The 2007 mass shooting at Virginia Tech involved a shooter using handguns with high-capacity magazines. Similarly, recent mass shootings in Tucson, Arizona; Oak Creek, Wisconsin; and Fort Hood, Texas all involved handguns with magazines holding more than 10 rounds. As evidenced by these events, a high capacity magazine can turn any weapon into a tool of mass violence. Forcing an individual bent on inflicting large numbers of casualties to stop and reload creates the opportunity to reduce the possible death toll in two ways: first, by affording a chance for law enforcement or bystanders to intervene during a pause to reload; and second, by giving bystanders and potential victims an opportunity to seek cover or escape when there is an interruption in the firing. This is not just theoretical: In the mass shooting in Tucson, for example, 9-year old Christina-Taylor Green was killed by the 13<sup>th</sup> shot from a 30-round high-capacity magazine. The shooter was later subdued as he was trying to reload his handgun after those 30 shots. The outcome might have been different if the perpetrator had been forced to reload after firing only 10 times.

Furthermore, high-capacity magazines are not required for defending one's home or deterring further action by a criminal. The majority of shootings in self-defense occur at close range, within a distance of three yards. In such a scenario, and at such close ranges, a 10-round magazine is sufficient to subdue a criminal or potential assailant. Nor are high-capacity magazines required for hunting or sport shooting. Like military-style assault weapons, high-capacity magazines should be reserved for war, and for law enforcement officers protecting the public. The continued commercial sale of high-capacity magazines serves only to provide those determined to produce a high body count with the opportunity and the means to inflict maximum damage. Indeed, there is evidence suggesting that when the previous ban was in effect, it reduced the number of high-capacity magazines seized by the police, as well as the lethality of incidents. See, David S. Fallis and James V. Grimaldi, "In Virginia, high-yield clip seizures rise," Washington Post, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html>.

## **III. Conclusion**

I would again like to thank the committee for the opportunity to come and testify on this important issue. As United States Attorney for Colorado, I go to bed every night wondering whether I will be awakened by the same sort of pre-dawn call I received on July 20, 2012,

notifying me of the horrific mass shooting in Aurora. And already twice since that terrible night just seven months ago, I have received phone calls from other United States Attorneys seeking counsel after receiving the call that their community was facing the same sort of horror we faced in Aurora. One such call came to me on a Sunday in August 2012, when the Sikh Temple shooting took place in Wisconsin, and another in December 2012, on the morning of the Sandy Hook tragedy.

I am proud to serve as United States Attorney for Colorado, the state I grew up in, and a state that honors American traditions, including the ownership and use of firearms as guaranteed by the Second Amendment. I share those values. Reasonable proposals to restrict the manufacture, importation and sale of military-style assault weapons and high capacity magazines, as supported by the Department of Justice, are essential to protect the American public and do not run afoul of the Second Amendment. That is why these measures are supported by the majority of Americans. Enacting reasonable and constitutional restrictions on the availability of assault weapons and high capacity weapons is a necessary step in the right direction. I look forward to taking your questions.



**BE A FORCE**

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**Edward A. Flynn**  
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Written Testimony of Milwaukee Chief of Police Edward A. Flynn  
Hearing before the Senate Committee on the Judiciary  
on S. 150 regulating assault weapons

Chairman Leahy, Ranking Member Grassley, and Members of the Committee, thank you for the opportunity to testify today regarding the use of firearms in our nation's cities. We have a collective responsibility to reasonably regulate both the people and the weaponry that inflict unconscionable violence here in the United States.

The Police Executive Research Forum and the International Association of Chiefs of Police, along with its Major City Chiefs Association, has well-founded legislative packages regarding firearms violence generally and assault weapons specifically. I am not here to rehash those positions, but as an active member of each of these organizations, I want to take the opportunity to enforce the collective wisdom of the most prominent chief law enforcement executives in the country.

I have been a police officer in this country for more than forty years, starting as a patrolman in Jersey City. I have had the opportunity to lead law enforcement agencies small and large for the past twenty-five years, including a cabinet position as the Secretary of Public Safety for Governor Romney. Among the most difficult challenges I continue to face is identifying and implementing control measures that positively affect the firearms violence that occurs in our neighborhoods.

It is time for Congress to pick a side and I am hopeful that it can be the side of law enforcement.

**Assault weapons are not akin to sporting weapons.**

Assault weapons are not built for sportsmen. Assault weapons are not built to hunt deer or elk or bear or other large game. Assault weapons are built to inflict violence against humans. Their military characteristics are not simply cosmetic in nature. These weapons are designed for combat. They are designed to quickly, easily and efficiently cause lethal wounds to human beings.

That is not to say that there is no place for assault weapons in our country. Aside from the understood military use of these weapons, police agencies throughout the United States have begun to purchase and deploy assault weapons in response to the reality that

IN SOME JOBS, SUCCESS IS MEASURED BY WHAT DOESN'T HAPPEN.

violent criminals are arming themselves with high-capacity, rapid-fire, easy-to-shoot firearms.

I spent the first twenty-five years of my policing career carrying a six-shot revolver. Police agencies throughout the country began to arm their members with semi-automatic pistols fundamentally because the criminals they were engaging on the streets were outgunning the traditional six-shooter. The next evolution of this national arms race was, of course, the deployment of high-capacity semi-automatic pistols and assault rifles among police agencies.

**Assault weapons and high-capacity magazines are commonly used by criminals, not by innocent citizens defending themselves.**

In 2012, my officers recovered evidence of gunfire (i.e., fired casings) 1,081 times and investigated 435 non-fatal shootings. Rifles are becoming more common in the commission of crime in Milwaukee: we confirmed that rifles were used in 185 crime incidents in the past year and we have arrested 157 individuals so far in connection to those incidents, twenty of whom were under the age of 17 at the time of their arrest. Since 2010, we have recovered 159 assault rifles from the streets of Milwaukee.

In 2011, firearms were the number one cause of death for police officers killed in the line of duty. In less than three years, seven of my police officers were shot with assault rifles and semi-automatic weapons.

In November 2007, Officers Lopez, Arce and Pajot attempted to stop two known gang members following a shots-fired complaint in which several occupied houses and a citizen had been struck by gunfire. The suspects opened fire on the officers' squad car, striking Officer Lopez in the shoulder and Officer Arce in the groin. Officer Arce returned fire, ending the confrontation. The suspects were carrying two semi-automatic pistols: one with a 10-round magazine and one with a 30-round magazine.

In June 2010, two Milwaukee Police officers responded to a call for a man with a gun. As they arrived, the suspect began to drive away and the officers attempted a traffic stop. As the suspect stopped, he exited his vehicle with an assault rifle – a Romanian version of the AK47 – and shot at the officers. One round struck Officer Chad Boyack. Officer Boyack's partner, Officer Nathan Fager, immediately returned fire, neutralizing the suspect and saving both officers' lives. The suspect is a convicted felon and a habitual offender. The assault rifle had a 30-round magazine and the firearm's stock had been sawed off.

In addition to law enforcement officers, numerous innocent Milwaukee citizens were injured or killed by assault weapons and high-capacity firearms. While the mass murders we hear about are horrifying to be sure, we must recognize that our nation's cities are enduring a slow-motion mass murder. Here are just a few stories:

On July 4, 2008, three suspects fired from gangways into a crowd of 100 people. Two of the suspects fired from 7.62x39 caliber assault rifles and a third from a .45 caliber semiautomatic pistol. Twenty-seven (27) 7.62x39 casings and nine (9) .45 casings were left on the sidewalk with four innocent people dead in the street.

On July 7, 2010, a 12-year-old child was playing in front of her house when a masked gunman approached and fired ten (10) shots from a semi-automatic pistol at the residence, striking the child three times. Despite being struck in the left chest, left arm and right arm, the child survived.

On New Year's Eve, just a few weeks ago, at 9:36pm, unknown criminals fired five 7.62 caliber rifle rounds into a duplex on the north side of our city. The rounds penetrated interior walls, furniture, and a seven-year-old child. Five children between the ages of three months and nine years were in the building.

The notion that innocent, law-abiding citizens will use an assault weapon or high-capacity firearm to protect themselves is generally disproved. We know that the victims and suspects of non-fatal shootings and homicides are typically career criminals: 97% of our suspects and 82% of our victims have criminal histories. Furthermore, two-thirds of our home invasion victims are known drug dealers, and the majority of the remaining one-third are likely drug- or gang-involved.

These people should not have access to assault weapons or high-capacity firearms. A targeted background check will help restrict their access. A ban on future civilian sales of assault weapons will help more. There is no singular solution, but we need to be cognizant of the long-term and unintended consequences of our continued civilianized proliferation of military-grade weapons.

#### **I believe in, support, and defend the Second Amendment.**

The Second Amendment – like every Constitutional right – is subject to reasonable restrictions and regulation. We already place restrictions on the types of weapons Americans can own. We already place restrictions on the types of Americans who can own weapons. In 2008, the United States Supreme Court ruled that the Second Amendment protects an individual's right to possess a firearm but noted that "like most rights, the right secured by the Second Amendment is not unlimited." The Court went on to give several categories of restrictions that are presumptively constitutional: prohibiting the mentally ill or convicted felons from possessing firearms; prohibiting the carrying of firearms in certain places or buildings; and prohibiting possession of "dangerous and unusual" weapons. *District of Columbia v. Heller*, 554 US 570 (2008).

Our system of rights is designed to protect and preserve both individual rights and the rights of a free society. This is not an impossible feat; these are not mutually exclusive rights. Indeed, we can protect both.



When we talk about political *positions*, we are open to new facts and are therefore able to negotiate and discuss and make progress. When we talk about political *beliefs*, however, we are in the realm of deep-seated certainties that are generally resistant to change. Instead of drawing ideological lines in the sand, we would do well to recognize the complexity of firearms violence, realize the variety of responses we as a society are able to employ, and admit that there is no singular solution to this issue. We need to address the accessibility of firearms designed solely to quickly kill human beings. We need to address the access to firearms by individuals who should not be permitted such access. To assume that we can do one without doing the other is imprudent. To assert that doing either is an infringement on the Second Amendment is *moreso*.

### **Conclusion**

As our experience grows – including Columbine, Virginia Tech, Fort Hood, Tucson, Aurora, Newtown, to name a few – we cannot be blinded by ideology. We need to be adaptive and nimble and evidence-based and specific. We need to recognize that we can protect our Second Amendment rights without unnecessarily and unreasonably infringing on our free society's right to public safety.

This bill does not take guns out of the hands of Americans. It does not strip Americans of their Second Amendment rights. In fact, if we want to be intellectually honest, the issues being raised here have more to do with commerce than they do with the Second Amendment to our Constitution. A lot of people make a lot of money selling firearms and ammunition. This is not inherently a bad thing, but it can force us to search for – and grasp onto – false logic.

The bill being discussed today places reasonable restrictions on future sales of certain types of firearms and magazines. It recognizes the distinction between hunting weapons and assault weapons. It allows for the sale or transfer of grandfathered firearms after a common-sense background check is completed. It promotes public safety. It protects the Second Amendment rights of our citizens. It prevents the preventable.

**Testimony of Neil Heslin****Senate Judiciary Committee Hearing on the Assault Weapons Ban of 2013****February 27, 2013**

My name is Neil Heslin. Jesse Lewis was my son. He was a boy that loved life and lived it to the fullest. He was my best friend. On December 14, he lost his life at Sandy Hook Elementary because of a gun that nobody needs and nobody should have a right to have. I'm here to tell his story. I know what I am doing here today won't bring my son back, but I hope that maybe if you listen to what I say today and you do something about it—maybe nobody else will have to experience what I have experienced.

On December 14, Jesse got up and got ready for school. He was always excited to go to school. I remember on that day we stopped by Misty Vale Deli. It's funny the things you remember. I remember Jesse got the sausage, egg and cheese he always gets, with some hot chocolate. And I remember the hug he gave me when I dropped him off. He just held me, and he rubbed my back. I can still feel that hug.

And Jesse said "It's going to be alright. Everything's going to be okay, Dad." Looking back it makes me wonder. What did he know? Did he have some idea about what was about to happen? But at the time I didn't think much of it. I just thought he was being sweet.

He was always being sweet like that. He was the kind of kid who used to leave me voice messages where he'd sing me happy birthday even when it wasn't my birthday. I'd ask him about it, and he'd say "I just wanted to make you feel happy." Half the time I felt like he was the parent and I was *his* son.

He just had so much wisdom. He would know things, and I would have no idea how he knew. But whatever he said, it was always right. He would remember things we'd done and

places we'd been that I had completely forgotten about. I used to think of him as a tiny adult. He had this inner calm and maturity that just made me feel so much better when I was around him.

Other people felt it, too. Teachers would tell me about his laugh, how he made things at school more fun just by being there. If somebody was ever unhappy, Jesse would find a way to make him feel better. If he heard a baby crying he wouldn't stop until he got the kid to smile. I remember him jiggling keys and standing on his head. Anything to make that crying baby feel better.

Jesse just had this idea that you never leave people hurt. If you can help somebody, you do it. If you can make somebody feel better, you do it. If you can leave somebody a little better off, you do it.

They tell me that's how he died. I guess we still don't know exactly what happened at that school. Maybe we'll never know. But what people tell me is that Jesse did something different. When he heard the shooting, he didn't run and hide. He started yelling. People disagree on the last thing he said. One person who was there says he yelled "run." Another person said he told everybody to "run now." Ten kids from my son's class made it to safety. I hope to God something Jesse did helped them survive that day.

What I know is that Jesse wasn't shot in the back. He took two bullets. The first one grazed the side of his head, but that didn't stop him from yelling. The other hit him in the forehead. Both bullets were fired from the front. That means the last thing my son did was look Adam Lanza straight in the face and scream to his classmates to run. The last thing he saw was that coward's eyes.

Jesse grew up with guns, just like I did. I started shooting skeet when I was eight years old. My dad was a vice president for years at a local gun club. He started taking me shooting

when I was eight. When I turned ten he started taking me hunting. He taught me to respect guns, just like I taught Jesse.

Jesse actually had an interest in guns. He had a bb gun. I watched over him like a hawk with that. I taught him gun safety. He knew it. He could recite it to you. He got it. And I think he would have got what we are talking about today. He liked looking at pictures of army guns, but he knew those weren't for him. Those were for killing people.

Some guns just don't have any place in the hands of civilians. The assault weapons we're talking about today, their sole purpose is to put a lot of lead out in a battlefield quickly. That's what they do. That's what they did at Sandy Hook Elementary. That wasn't a killing; it was a massacre. Those guns and those clips let Adam Lanza massacre those kids. And my son was one of them.

I wish I wasn't here with you today. The best day of my life was the day my son was born. The worst day was the day he died. I don't want to relive that day talking to you here about it. It would be easier for me just to stay home.

But I know that's not what Jesse would do. Jesse died screaming at a man with a gun. He died yelling at the top of his lungs so maybe some of his classmates could get to safety. I'm not going to scream at you, but I hope that maybe I can use my voice like my son used his. Maybe if I make enough noise a few beautiful innocent children like my Jesse won't have to die.

I'm not real political. Half the time I think it doesn't matter which group of you guys runs things out here, no offense. I've always thought it wasn't a real good idea for people to be walking around the streets with military weapons, but I probably wouldn't have said anything about it.

But right now this isn't about politics. The day my son died I was supposed to see him in the afternoon. His mom and I were going to go meet him at school and we were going to make gingerbread houses with his class. I love that stuff, just having that extra time with my kid.

So I guess I was in a pretty good mood when I started to hear about a shooting. And at first I didn't really know what that meant. You know, we all try to look on the bright side. So when I heard about a shooting I thought, maybe it's another town. And then when I heard it was Newtown I thought it probably wouldn't affect me. Even when they said it was a school I figured it was probably a domestic dispute or something. Maybe it was a suicide.

I hate to say it but even when you know your community has been hit you hope and pray it wasn't your boy. They had us all go to a fire station to wait and see if our kids would make it out of the school. By 3:30, maybe 4:00, they told us there were no more survivors. I should have realized. They'd basically told me my son was dead, but I waited. I told the people what to look for, what he'd been wearing that day. He had this striped shirt and Carhartt jacket, and these pants that fit him in September, but then he hit a growth spurt. I gave the description and I waited some more. I waited and I hoped, until 1:30 in the morning. That's when they told me he was wasn't coming.

So the reason I say this isn't about politics is because what I felt on that day, and what I've felt since, doesn't have anything to do with politics. In politics, people like to debate and say if we banned the weapon Adam Lanza used would he have just found something else. But let me tell you, when you're sitting at a firehouse and it's one in the morning and you're hoping against hope that your son is still hiding somewhere in that school, you want any change that makes it one bit more likely you'll see your boy again. If keeping those unnecessary weapons off the street would have let one more of those children leave that school building, it might have been

my Jesse. If Adam Lanza had been able to shoot just one fewer bullet, maybe my son would be with me today.

Before he died, Jesse and I used to talk about maybe coming to Washington someday. He wanted to go up the Washington monument. When we talked about it last year Jesse asked if we could come and meet the President.

I said earlier that I can be a little cynical about politicians. But Jesse believed in you. He learned about you in school and he believed in you. I want to believe in you, too. I know you can't give me Jesse back. Believe me, if I thought you could I'd be asking you for that. But I want to believe that you will think about what I told you hear today. I want to believe you'll think about it and then you'll do something about it, whatever you can do to make sure no other father has to see what I've seen. You can start by passing this assault weapons ban and taking these senseless weapons out of the hands of people like Adam Lanza.

Thank you for listening to my story.

**Testimony of Dr. William Begg  
Director, Emergency Medical Services  
Danbury Hospital, Danbury Connecticut  
Before the Senate Judiciary Committee  
February 27, 2013**

Thank you Chairman Feinstein, Ranking Member Grassley and members of the committee for the opportunity to testify today about gun violence in our country. My name is Dr. Bill Begg and I am the Emergency Medical Services Director at Danbury Hospital, which is roughly 10 miles from Newtown, Connecticut. Let me begin by saying that my heart goes out to the 26 families from Sandy Hook Elementary that lost their spouses, their parents, and their children in the worst mass murder of children the US has seen in the last century. Newtown is still hurting badly. Many first responders have not returned to work and many of our children have not returned to school. Many more who have returned to work are receiving counseling or considering counseling services.

In terms of my professional training, I am a board certified ER doctor that trained at The Johns Hopkins Hospital in Baltimore, Maryland. During my residency, I also did some training at the Maryland Shock Trauma Institute and I spent time practicing emergency medicine in the Fort Drum, New York Community while my wife served our country as a US army officer in the Somalia conflict. For the last twenty years, I have practiced emergency medicine at the Danbury Hospital Emergency Room in Connecticut and helped found and develop our region's trauma center. I am the local EMS Medical Director that serves the greater Danbury area, including Newtown. In 2003, I was named physician of the year in Fairfield County, Connecticut, an area which includes Newtown, Connecticut.

My inspiration for coming here today is for several reasons. I am a parent of students in the Newtown school district and I have family members that serve with the Newtown Volunteer Ambulance Corps. I serve as a track coach for one of the elementary schools in Newtown. Yet, what forever changed my life was being the Emergency Room physician that was on shift at Danbury Hospital on December 14<sup>th</sup> - the day of the horrific shooting at Sandy Hook Elementary School. This event has forever changed our community and my life. In the aftermath of the shooting, I, along with other like-minded physicians, founded United Physicians of Newtown, a group of 101 Newtown doctors that came together with a single platform in response to the Sandy Hook massacre. I also serve as medical advisor for the Newtown Action Alliance, another grass roots organization that formed in response to the Sandy Hook Massacre.

My goal is to bring my background as a doctor and as a parent to convince you that gun legislation that you are considering now will make a difference. It will make a difference in the lives of many and could prevent future tragedies like Newtown. While I am not a ballistics expert, I have seen many gun related deaths over the past 25 years. I witnessed an assault weapons related death my first day in a hospital as medical student in New York City in 1987. My experiences in Baltimore and NYC with assault rifle deaths are vivid memories I will never forget.

Specifically, I am asking that you pass Senator Feinstein's assault weapons ban to take military-style assault weapons and large capacity magazines off the streets. I'm a member of the American College of Emergency Physicians and American Medical Association, which has endorsed Senator Feinstein's assault weapons bill, along with most other health organizations that I am familiar with.

Second, I believe we need universal background checks for all gun purchases. A 2013 Johns Hopkins public opinion poll noted that 69% of all Americans, including 46% of gun owners, would support banning the sale of military-style, semiautomatic assault weapons that are capable of shooting more than 10 rounds of ammunition. The same poll noted that 89% of all Americans, including 84% of gun owners, would support universal criminal background checks.

Third, I believe that we must strengthen our mental health care system by ensuring that students and young adults get the proper treatment they need.

Fourth, please let us do some gun research that is real by ending the freeze on gun-related research at the Centers for Disease Control and other federal agencies. Lastly, preserve the rights of health care providers to protect their patients and communities from gun violence by allowing them to talk to their patients about gun safety.

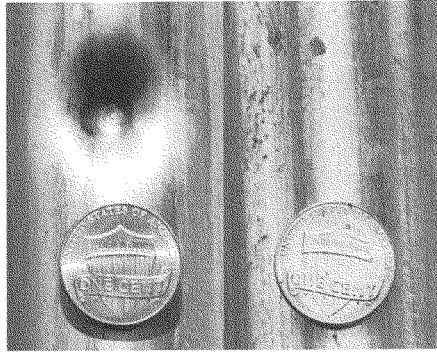
Since many people outside of law enforcement, the military or the emergency room have never seen the destruction that a gunshot can cause on the human body, I have included several pictures. Note that these pictures are not from the Sandy Hook massacre, as it would be highly inappropriate to show such pictures in deference to the Sandy Hook families and in respect of HIPAA laws.

Handgun (.22) damage vs. Assault Rifle (.223) damage:



Handgun (.22) bullet vs. Assault rifle (.223) bullet





Handgun (.22) bullet damage to a metal pipe  
Left picture is the front of the pipe. Right picture in the back of the pipe.

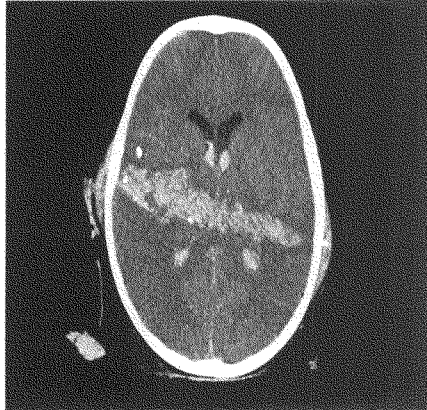


Assault rifle (.223) bullet damage to a metal pipe.  
Left picture is the front of the pipe. Right picture in the back of the pipe.  
Photo credits above: Aaron Spuler

Gunshot damage on the human body

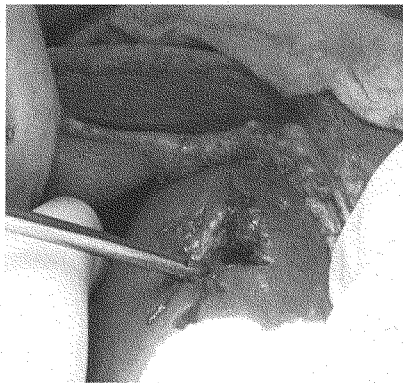
1) CT scan of a gunshot to the brain. (Credit: Trauma.org)

The white area going from 9:30 to 3:30 position is the area damaged by the bullet:



2) Gunshot wound to the liver: (Credit: Trauma.org)

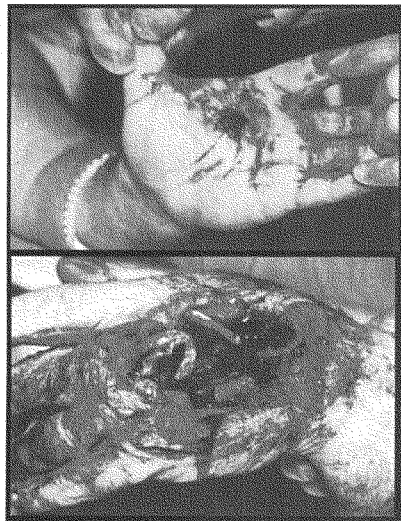
The area next to the silver probe is from a gunshot wound.



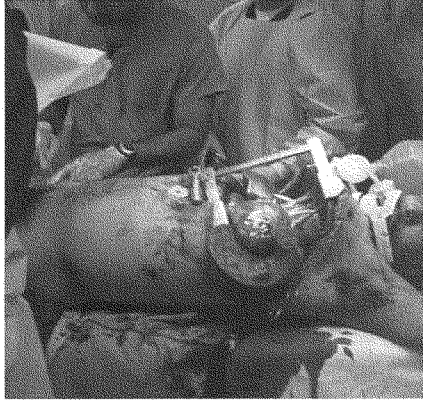
- 3) Gunshot wound to the chest: (Credit: Trauma.org)  
The gunshot wound has blood around it near the nipple.



- 4) Gunshot wound to the hand (Credit: Trauma.org)  
Top slide in the entrance wound from the bullet.  
Bottom slide is the exit wound from the bullet.



5) Opening a person's chest after a gunshot (Credit: Connecticut trauma symposium)  
 Final effort to identify and stop bleeding in person in usually in cardiac arrest



Each of the slides above represents gunshot wounds from different parts of the body, representative of wounds I have seen in my 25 year career in the medicine.

Each of the children murdered at Sandy Hook Elementary had reportedly three to eleven bullet wounds per the report of Dr. Wayne Carver, the Connecticut State Chief Medical Examiner on December 15, 2012. These pictures should in no way be construed as representing any of the actual injuries sustained by any of the victims from the Sandy Hook Massacre on December 14, 2012.

Unfortunately, mass shootings have happened all around the world. For example, in 1996, in Dunblane, Scotland, a 43-year-old gunman entered an elementary school and fired his weapons 109 times shooting 27 children and 4 teachers; killing 16 children and one teacher. He then shot and killed himself. Andy Murray (Reining US Open and Olympic tennis champion) survived the massacre.

Another example was again in 1996 but in Port Arthur, Australia. A 28-year-old gunman entered a popular tourist site with an AR-15 rifle and shot 35 people dead and wounded another 23 people.

The difference with these cases and the tragic string of mass shootings at Columbine, Virginia Tech, Aurora, Oak Creek and so many others is that legislators in those countries acted by passing reasonable gun violence measures. In response to the incident in Scotland, meaningful gun legislation was enacted, that still permitted certain sporting guns, historic handguns, and selected other guns. Gun laws in Australia, which had been relatively lenient before the Port

Port Arthur massacre, were reviewed and tightened significantly after the incident. Australians who want to purchase a gun now must have an extensive background check. Semi-automatic gun and assault type rifles were banned.

Did the legislation make a difference right away? Actually, in some instances, it didn't. After many years though, the effects of real gun legislation did decrease gun related deaths.

According to a December 17, 2012 article in Time World, the results of the Australian law were significant. A widely cited 2010 study in the American *Journal of Law & Economics* showed that gun-related homicides in Australia dropped 59% between 1995 and 2006. The firearm-suicide rate dropped 65%.

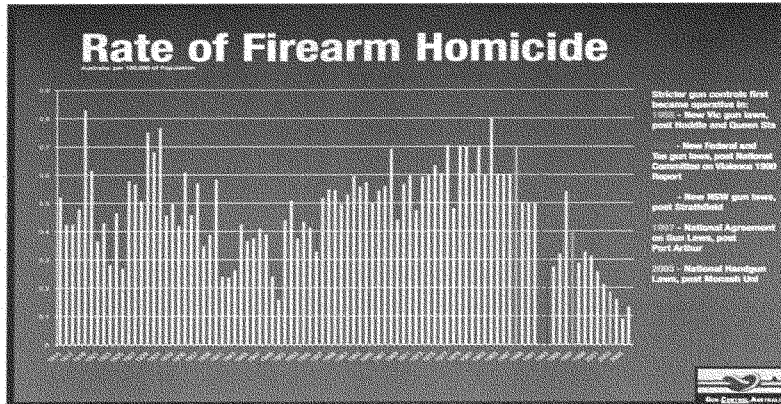
While the generation preceding the Port Arthur tragedy there had been over a dozen mass shootings, there has been no mass shooting in Australia since 1996. Furthermore, despite a surge in gun-related offenses in the early 2000s, the past seven years in the U.K. have seen successive drops in gun crimes.

Where do we stand now (2010 data)?

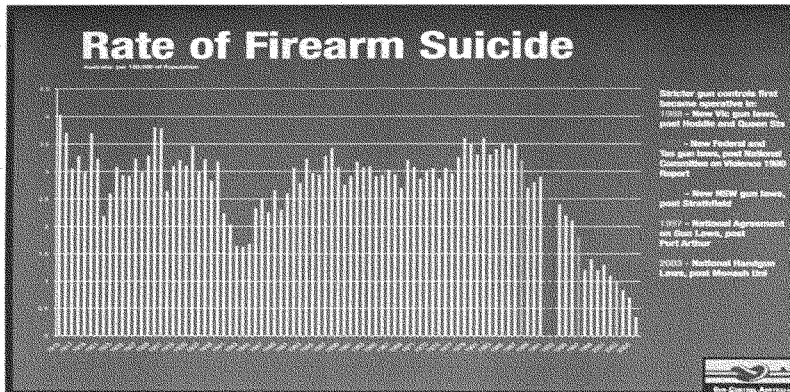
- Mass murders since 1996:
  - USA: over 20
  - Great Britain: 1
  - Australia: 0
- Total gun deaths (2010): [GunPolicy.org](http://GunPolicy.org)
  - USA: 31,672
  - Great Britain: 155
  - Australia: 236
- Gun death rate per 10,000
  - Association between handgun purchase and mortality from firearm injury. *Inj Prev.* 2003 March; 9 (1):48-52
  - USA: 102
  - Great Britain: 2.5
  - Australia: 10.5

It's clear from these numbers that countries that have real gun legislation do actually have a lower chance of gun-related death for their citizens. Additionally, the charts below illustrate the dramatic reduction in homicides and suicides from firearms in Australia after the Port Arthur shooting.

Australian firearm related deaths (1915-2005) that highlight a significant drop in yearly homicide and suicide death rates after legislation was introduced.



Yearly Australian firearm related homicides rates relative to legislation that was introduced.



Yearly Australian firearm related suicide death rates relative to legislation that was introduced.  
Charts courtesy Gun Control Australia.

Gun legislation takes a while to come to fruition, but it works.

If you want to buy a gun with the idea of protecting yourself and your family, the data is quite clear that you have an *increased* chance of dying from gun related injuries:

- Homicide risk significantly increases if there is a gun in the home.
  - Women are five times as likely to die of gun violence from their partner if there is a gun in the home. July 2003, Vol 93, No. 7 | American Journal of Public Health Two-thirds of women killed by spouses are killed with guns.
  - A gun stored in the home is associated with a threefold increase in the risk of homicide. *Gun ownership as a risk factor for homicide in the home. N Engl J Med. 1993;329(15):1084-1091pmid:8371731*
- Suicide risk significantly increases if there is a gun in the home.
  - A gun stored in the home is associated with a fivefold increase in the risk of suicide. *Gun ownership as a risk factor for homicide in the home. N Engl J Med. 1993;329(15):1084-1091pmid:8371731*
  - Victims of suicide living in homes with guns were more than 30 times more likely to have died from a firearm-related suicide than from one committed with a different method. *Am. J. Epidemiol. (2004) 160 (10): 929-936.*
- Owning any gun significantly increases your risk of being shot.
  - People possessing a gun were more than 4 times more likely to be shot in an assault than those not possessing a gun. *Investigating the link between gun possession and gun assault. Am J Public Health. 2009;99(11):2034-2040* Branas and colleagues
- Unintentional gun death significantly increased if you own a gun:
  - You are 28 times more likely to die of an unintentional gun death if you own a gun-*Gun Policy and Research: Association between handgun purchase and mortality from firearm injury. Inj Prev. 2003 Mar;9(1):48-52).*
- Overall risk of firearm death to your family if you own a firearm:
  - You have a significantly increased chance that you or your spouse or your kids are going to be killed from your own gun related to domestic homicide, suicide or accidental death.
  - This data must be available to those who are considering buying a gun out of fear of being killed from a potential intruder.

For all of these reasons, I am urging you to consider the following:

#### **Ban of Military-Style Assault weapons and High-Capacity Magazines (over 10 rounds)**

As a result of this growing gun violence epidemic, more than half of the largest mass murders in our countries history have taken place since Columbine. Mass shootings are a slowly growing cancer in our society that must be addressed now.

Folks say, in the big scheme of things there are not that many assault weapons deaths in our country. Please don't tell that to the people from Columbine, from Virginia Tech, from Tucson, from Aurora, from Wisconsin. And definitely do not tell that to the families of Newtown...

**Require Background Checks for All Gun Purchases**

We need to close the current loopholes that allow an estimated 40 percent of all gun sales to occur without a background check. You should also take steps to strengthen the background check system by requiring states to put more information into the database.

**Strengthen Our Mental Health System**

Once identified, ensure students and young adults get the proper treatment for mental health issues. What upsets me is the same folks that say we should only look at mental health issues as a cause of gun violence are the same ones that are saying we need to have smaller government. What are the first programs to be cut when we try to balance the budget—programs like mental health

I have little hope that in this fiscal climate that those who want to maintain the status quo for guns will actually vote for more mental health programs. I'm not asking for you to add mental health services, I'm just asking you to please not cut any more in the days to come.

**Remove Current Restrictions on Federal Research on Gun Violence**

End the freeze on gun related research, as the CDC and other scientific agencies have been barred by Congress from using funds to "advocate or promote gun control".

Assault rifle gun deaths include many that tragically don't even make it to the ER because the bodies are so badly mutilated they are pronounced dead in the field. Comprehensive research would allow governing bodies to collate data from a multitude of agencies.

Conduct research on the causes and prevention of gun violence; including links between video games, media images, and violence. Please let us do gun research that is real.

**Education:**

Protect the rights of health care providers to talk to their patients about gun safety

Clarify that no federal law prevents health care providers from warning law enforcement authorities about threats of violence.

In 2011, Florida legislation was proposed and signed into law by the governor (eventually rescinded) that wanted to prevent doctors from discussing gun violence with their patients. Doctors would have been fined \$10,000 and would have had their medical licenses suspended. What this did was to send a message to doctors across the country to "watch out". We are being intimidated not to discuss gun violence as a public health issue.

I accept one's second amendment right to own a gun if one goes through the proper channels. On the other hand, when I educate my patients on the effects of unsafe sex, morbid obesity, tobacco use, excessive alcohol use, texting and driving, or seatbelt use; please allow me as a medical doctor to talk to them about the risks of gun ownership - please?



In closing, I want to thank Senator Dianne Feinstein for all her efforts to address this public health issue of unnecessary gun deaths in our country. Since Senator Feinstein became mayor of San Francisco as a result of the assassination of her predecessor, there have been almost one million Americans killed from guns.

I want to also thank my Connecticut leaders, including Newtown First Selectman Pat Llodra, Congresswoman Elizabeth Esty, Governor Dan Malloy, Senator Chris Murphy, and Senator Richard Blumenthal for their tireless efforts to afford gun legislation change since you stood with the Sandy Hook families on December 14<sup>th</sup> in their darkest hour. The time you have spent with us on nights, weekends and holidays discussing this issue has not gone unnoticed.

I want to recognize the valiant efforts of the multitude of first responders and local residents who responded to Sandy Hook Elementary on December 14th.

To the families of those who lost loved ones, on behalf of the ER, we tried our best.

And to you lawmakers, my mom, and my dad were both elected Connecticut State representatives. I asked mom- mom, why won't they make a change, when most of the country supports gun legislation? Why do you think? She said well- they have their party lines, and they have their lobbies, they may not have seniority to vote their own way. I said, do you think this one time they'll make the right decision? She said- yes, I think this one time they might.

So I'm asking you to please make the right decision on behalf of Newtown, and Connecticut, and the United States.

Thank you.

*Please note that my testimony represents the views of Dr. Bill Begg and the United Physicians of Newtown; not Danbury Hospital, nor Western Connecticut Health Network.*

**William V Begg III, MD, FACEP**

*Newtown, Connecticut Resident*

*EMS Medical Director, Danbury Hospital*

*Emergency Department Physician & Clinical Practices Coordinator, Danbury Hospital*

*President, Danbury Hospital Medical Staff*

**Before the United States Senate Judiciary Committee  
Hearing on Senate Bill 150, 113th Congress, First Session  
February 27, 2013**

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**Testimony of Professor Nicholas J. Johnson**

*Fordham University School of Law  
Author of *Firearms Law and the Second Amendment: Regulation, Rights and Policy* (Aspen 2012).*

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My testimony is drawn from an extensive analysis of “assault weapon” regulation that I published in 2009, in the *Hastings Law Journal* entitled, *Supply Restrictions At The Margins Of Heller: Stenberg Principles, Assault Weapons And The Attitudinalist Critique*, 60 *Hastings L. J.* That article is Appendix “A” to this testimony.

My core point is that the classifications established by S. 150 are unsustainable under the lowest standard of constitutional review; that they fail to meet even the rudimentary requirements of rational basis.

To sustain the category of guns the bill claims are *exceptional* (and thus must be banned), we must compare it to the baseline of guns deemed *unexceptional* and thus would remain legal. The characteristics that define the prohibited class all objectively measureable. And by every objective measure, the classification is unsustainable.

The primary characteristic driving the prohibited category is multi-shot capability. Take the example of the AR-15. With the common thirty round magazine it will fire thirty, .22 caliber, typically 55 grain projectiles, one with each pull of the trigger. This characteristic says the bill, justify the ban.

Now compare the common repeating shotgun, either pump or semiautomatic. Countless guns of this type are on the bill’s list of non-prohibited firearms(assuming

for semiautomatics that the bill's definition of pistol grip "any other characteristic that can function as a grip" would not ban classically configured wood stocks with palm swells, etc.). And there are tens of millions of them in the civilian inventory. In 12 gauge configuration, with a three inch, 00 buckshot load, any of these guns will fire fifteen, .33 caliber, 60 grain projectiles with a single pull of the trigger. With a minimum magazine capacity of five rounds and one chambered, that is ninety, .33 caliber projectiles fired with 6 trigger pulls. There are a variety of other loadings that will push this calculation upward or downward, but this example makes the point. See, <http://www.shootingillustrated.com/index.php/20447/buckshot-basics/>

Additionally, this broad category of repeating shotguns can be *continuously reloaded* without disabling the gun. That is an attribute that the prohibited class does not exhibit. So the downtime, while the shooter changes magazines, that has been offered as a justification for the bill's 10 round magazine limit, is circumvented by the shotgun.

Another claim that supposedly distinguishes the prohibited class of guns, is that they are equipped with pistol grips or barrel shrouds and those things it is claimed, contribute to un-aimed, *spray firing, or firing a cloud of projectiles* without aiming. First, this is a dubious characterization of any rifle. But more importantly, it actually better describes shotgun technology. The shotgun actually does fire a cloud of projectiles, that spreads as it moves downrange. Most shotguns do not even have traditional front and rear sights, which are universal on rifles. Instead, the shotgun will have just a front bead, illustrating that the design anticipates pointing in the general direction of often moving targets and covering the targets with a cloud of projectiles. Firing the gun while moving the muzzle enhances this cloud effect.

These basic points are confirmed by the United States Army assessment of whether use of the shotgun in battle is consistent with the laws of war. A version of this analysis appears in a 1997 article published in the *Army Lawyer*. See, W. Hays Parks, *Joint Service Combat Shotgun Program*, The Army Lawyer, October 1997, 16-24.

The Army assessment relies centrally on an early analysis by Brig. Gen. Samuel T. Ansell, whose evaluation continues to form the position of the United States as to the legality of the shotgun in combat. Gen. Ansell's critique was prepared

in response to a formal complaint by Germany in World War One, charging that the Model 1897 pump shotgun, in use by U.S. troops, was so destructive that it violated the laws of war. General Ansell responded this way:

The shotgun ... finds its class or analogy as to purpose and effect, in many modern weapons. The dispersion of the shotgun pellets is adapted to the necessary purpose of putting out of action more than one of the charging enemy with each shot of the gun; and in this respect it is exactly analogous to shrapnel shells discharging a multitude of fragments *or a machine gun discharging a spray of bullets.*

*Id.* at 16.

The 1997 Army assessment goes on to describe a British analysis of the combat shotgun that is also instructive for our purposes. It reports that “To a range of 30 yards, the probability of hitting a man sized target with a shotgun was superior to that of all other weapons.” *Id.* at 20. On this measure it is superior to the “assault rifle” [*Here the reference to assault rifle is the technically defined, fully automatic infantry rifle, firing ammunition in the intermediate ballistics range, see Appendix A at 1290*] and superior to “a submachine gun firing a five round burst.” [*Here the submachine gun reference is to a fully automatic carbine firing a pistol cartridge*]. Shotguns had a hit probability ratio twice as good as rifles.” *Id.* at 20.

The S. 150 is similarly incoherent in its other distinctions. For example, while it bans AR-15 style rifles, it puts the Ruger Mini 14, on the list of good guns, even though in functional effect, these guns are indistinguishable.

^ ^ ^ ^ ^

When gauged against objectively measurable characteristics, the rhetoric that defines the prohibited class in S. 150, not only inaccurately describes the class, but more accurately describes guns that S. 150 classifies as less dangerous and places on a companion list of good guns. This renders the bill simply incoherent. It means that the classifications created by the bill do not pass even a rudimentary rational basis review. Also recall that the Supreme Court has emphasized that something well in excess of rudimentary rational basis is demanded here. *District of Columbia v. Heller*, 554 U.S. at 628 n.27

My detailed analysis from 2009 (Appendix A), shows how the “assault weapon” classification fails under the undue burden standard that the Supreme Court has used in the reproductive rights cases and that the 9<sup>th</sup> Circuit has adopted in Second Amendment cases. *See Nordyke v. King*, 644 F. 3<sup>rd</sup>. 776 (2011). But it bears repeating that one does not need to go to that sort of enhanced standard. Even under the lowest level of review, a rudimentary rational basis review, the classifications in the bill cannot be sustained.

Ultimately S. 150, like the 1994 assault weapons ban will, *by its own measure, make things worse*. In both cases the result is mainly to accelerate demand for and increase ownership of the very type of gun the bill would claim to ban. As far as any actual or ultimate ban of the guns, that was purely illusory in 1994 and would be only a temporary limit under the proposed bill, which is constitutionally unsustainable. It may help to elaborate the point about the 1994 ban, because some of its structural problems carry over to the current bill.

The 1994 ban was illusory because it defined the prohibited class by functionally insignificant characteristics that some people thought were scary or aggressive looking – e.g., pistol grips, bayonet lugs and folding stocks. New sales of those guns were in fact prohibited. But with very slight changes, functionally identical guns remained available. And the formal ban caused a scare in the market that actually drove up the demand for those functionally identical guns.

This underscores the basic incoherence of the “assault weapon” classification. Because it is not a technically sustainable category, we ended up with far more of basically the same guns in the civilian inventory in 2004 (when the ban expired) than we had when the ban was enacted in 1994. And today, the total may be approaching 10 million, with that number driven to new levels by the current proposal.

S. 150 will have the same unintended consequence as the 1994 ban. Even if passed, the classifications at its core, are rhetorical and political ones that cannot survive even the most minimal standard of constitutional review. So at best, it will be a temporary measure, whose result will be to accelerate demand for the guns it attempts to ban. On that measure, even people whose reflexively think the bill is a good idea, should reject it.

My 2009 analysis also includes several other comparisons of the assault weapon category to other guns. Appendix A at 1289-1309. These are separate aspects of the critique that the prohibited classification fails to meet even the basic requirements of rational basis review.

For example, on the measure of its *prevalence in crime*, one salient comparison is rifle homicides to handgun homicides. See Appendix A at 1289-1309. FBI data from 2010, for example, shows roughly 6,000 handgun homicides and 358 homicides with rifles. This illustrates we have long known; that the firearms characteristic that poses the greatest risk is concealability.

On measures of *ballistics*, the ammunition used in the typical “assault weapon” exhibits intermediate ballistics. On this objective measure the class is less destructive than most rifles used for hunting medium to large game. *Id.* See also, Nicholas J. Johnson, *Administering the Second Amendment: Law, Politics, and Taxonomy*, 50 Santa Clara L. Rev. 1263 (2010).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol50/iss4/6>, and

Nicholas J. Johnson, *The Second Amendment in the States and the Limits of the Common Use Standard*, *Harvard Law and Policy Review Online*.

[http://hlpronline.com/wp-content/uploads/2010/04/johnson\\_commonuse.pdf](http://hlpronline.com/wp-content/uploads/2010/04/johnson_commonuse.pdf)

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Any critique of S. 150 also must be particularly skeptical of its underlying “bad gun” regulatory formula which asserts only the limited aim of banning exceptional categories of firearms – e.g. the ultimately boundless class of “what criminals choose” or otherwise exceptionally dangerous guns. The longer history and broader implications of this approach are illuminating.

Today we are debating whether an elastic category of “assault weapons” should be banned. But on the long view virtually every category of guns has been called an exceptional category of “bad guns” that should be banned.

For most of the modern debate, the aim was to ban handguns. That was the impulse for formation of the Handgun Control Inc., now the Brady Organization. See Nicholas J. Johnson, *The Constitutional Politics of Gun Control*, 71 Brooklyn Law

Review 174 (2005). The goal also was evident in the name of a similar organization, The Coalition to Ban Handguns.

In smaller doses we have had proposals for banning, "civilian sniper rifles" defined by the Violence Policy Center as:

- a bolt action or semi-automatic
- having a two-stage trigger
- having a free-floated barrel
- having a "bull" or "target" barrel
- having a fluted barrel

The technically dubious claim was that "[t]he end product of these and other fine-tuning features, is a precision instrument that is more rugged and more accurate than its hunting cousins, and probably exceeds the capabilities of the person who shoots it." (VPC, "One Shot, One Kill," 1999, pp. 37-39). One advocate, Rebecca Peters, then Director of the International Action Network On Small Arms, urged that civilians should not have "sniper rifles" that are deadly at "100 meters distance."

Rebecca Peters, CNN Oct. 23

2002 [http://transcripts.cnn.com/TRANSCRIPTS/0210/23/i\\_qaa.01.html](http://transcripts.cnn.com/TRANSCRIPTS/0210/23/i_qaa.01.html)

Given the U.S. Army assessment of the shotgun, it is ironic that it seems to be the currently favored version of the "good gun", recently referenced for example by Vice-President Biden as his personally favored self-defense tool. See, Joe Biden's Shotgun Advice Would Land His Wife in Jail, Police Sergeant Said. Washington Times, Feb. 21, 2013. , <http://www.washingtontimes.com/news/2013/feb/21/joe-bidens-shotgun-advice-would-land-his-wife-jail/>. The vice president ventures several wild claims about the AR-15 and the shotgun. For a more accurate account, see Appendix A, pages 1289-1309.

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My overall assessment here is grounded on a basic reality that we all recognize. Guns are dangerous. As a class they are exceptionally deadly when compared to other defensive technologies. When deployed against helpless people, virtually every gun poses exceptional dangers. And on that score, S. 150 is mainly a distraction

because the question of how to protect helpless people from a madman with a gun is a quite different conversation from the debate surrounding this bill.



## Appendix A

### Testimony of Professor Nicholas J. Johnson Before the Senate Judiciary Committee Hearings on Senate Bill 150 February 27, 2013

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#### Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique

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Nicholas J. Johnson

#### Introduction

With close to 300 million guns in the civilian inventory, n1 and confirmation of the right to keep and bear arms in District of Columbia v. Heller, n2 the United States is well past the point where firearms supply restrictions can be effective. n3 Nonetheless, proposals for supply restrictions at the margins of the individual right continue. n4 Recent proposals for renewal of the 1994 Assault Weapons Ban, and the corresponding market response, suggest that people on both sides of the issue think Heller might not protect assault weapons. n5

Heller established that citizens have a constitutional right to possess guns that are in common use for ordinary purposes like self-defense. n6 Like any first effort, Heller leaves many issues unsettled. The common-use test might generate either empirical filters or categories of functionality that could protect guns labeled assault weapons. However, Heller does not promise that everything nominally protected is always [\*1286] protected. n7 There are many different types of guns, each with distinct utilities to the user and correspondingly distinct externalities that the government might want to control. As the majority acknowledged and dissenters criticized, Heller provides no obvious standard for determining whether some guns and some circumstances get more protection than others. n8 The assault weapons question prompts the search for an appropriate standard. What should happen when a state asserts that assault weapons must be banned because they impose peculiar externalities and that the ban is constitutional because many other guns remain available?

We are not working on a blank slate. It is a common problem that protected rights are exercised in a variety of ways, employing different methodologies and technologies that raise distinct constitutional questions. We might employ something like the broad protection granted to alternative methodologies under the First Amendment. n9 It is not just traditional printing presses, but an endless variety of communications methodologies that are protected. n10 On that principle, all guns satisfying the Heller common-use test might enjoy equally robust protection. n11 The obvious objection is that guns are different. The gun right poses risks of a different character and magnitude. We need something that acknowledges that both the right, and the restriction of it, put human life in play. On that count, the Court's abortion jurisprudence is uniquely-suited for building foundation on which to build a standard for resolving the assault weapons question.

Over a decade ago I argued that there is a broad analytical intersection between abortion and gun-rights claims. n12 The threshold analogy is apt because both situations pit the right-claimant against substantial competing life-interests. I illustrated the intersection primarily through the work of abortion rights commentators who repeatedly use self-defense

themes to construct the abortion right. n13 That broad intersection remains. And within it, on the particular question of [\*1287] "partial-birth abortion," there is a compelling analogue to the assault weapons question.

In *Stenberg v. Carhart*, the Supreme Court engaged an abortion claim that closely tracks the assault weapons question. n14 *Stenberg* dealt with a challenge to Nebraska's partial-birth abortion ban. n15 The question was whether a woman could demand access to a particular abortion methodology known alternately as dilation and extraction ("D&X") or intact dilation and evacuation ("intact D&E"). n16 The majority decision, advanced by the liberal wing of the Court, affirmed a woman's right to the abortion methodology best suited to protect life and health, even when lesser but still safe alternatives are available. n17 This, in principle, is the assault weapons question. Particularly, can the state ban guns that in some circumstances are the best self-defense options, on the excuse that other guns remain available?

The Court addressed the partial-birth abortion question again in *Gonzales v. Carhart*, upholding a federal ban on the same procedure protected in *Stenberg*. n18 *Gonzales* was in many ways the conservative's repudiation of *Stenberg*. It distinguished but did not overturn *Stenberg*, which remains an important model for our purposes. n19 The statute in *Gonzales* rested on explicit congressional findings that partial-birth abortion "is never medically necessary." n20 *Stenberg*, in contrast, was grounded on findings that the contested methodology sometimes was the best available procedure for preserving the life or health of the mother. n21 This "best available methodology" claim is where the partial-birth abortion / assault weapons comparison is most apt.

Of equal importance, *Stenberg*, more so than *Gonzales*, frames the attitudinalist critique n22 that is the subtext of this Article. [\*1288] "Attitudinalism," widely endorsed by political scientists, argues that legal scholars erroneously focus on what justices say to explain and predict the Court's decisions. n23 Attitudinalists argue that this law talk is "worse than useless." n24 They say it is not the words and principles articulated in published opinions that dictate outcomes, but rather the passions n25 that drive Justices' preferences for particular outcomes that control results. n26 Just knowing whether a judge is liberal or conservative, and her general policy preferences and biases, say attitudinalists, better explains and predicts her votes than anything written in the *United States Reports*. n27

*Stenberg* presents a better test of the attitudinalist critique than *Gonzales*. It pits Court liberals' constitutional protection of better methodologies to protect life or health in the abortion case against their nascent disparagement of the parallel gun claim through the series of dissents in *Heller* - views that prefigure a rejection of arguments that assault weapons are sometimes the better self-defense tools. n28 While *Gonzales* juxtaposed with *Heller* presents for the conservative wing similar tests of principle, those turn out to be quantitatively lighter burdens. As I show throughout this Article, conservatives could, on a principled basis, apply *Stenberg* standards to uphold a claim to better methodologies in the assault weapons case even after rejecting some of those same principles in *Gonzales*. So while both wings of the Court are exposed to the attitudinalist critique, Court conservatives can more easily justify their position on points of principle.

[\*1289] This Article will show how assault weapons might be protected under *Heller* as a threshold matter, how *Stenberg*'s guarantee of better methodologies to protect life or health applies just as easily to the assault weapons question, and how the response of Court liberals to an assault weapons case will be an important test of the attitudinalist critique. Part I will show how the assault weapons question emerged, and position it in the context of gun-control politics. Part II will show how assault weapons fit within the category of firearms protected under *Heller*'s common-use test, and how assault weapons, like all firearms, exhibit special marginal utilities (SMUs) that make them especially effective in certain categories of self-defense. Part III will show that the principles rendered in *Stenberg* apply just as easily, and sometimes more so, to assault weapons, putting the liberal wing of the Court to a test of principle that is much tougher to overcome than the roughly parallel burden that *Gonzales* poses for Court conservatives.

#### I. Assault Weapons and Modern Politics

The first fight is about definitions. Some people still believe the assault weapons debate is about machine guns. n29 This is not surprising given that proponents of the 1994 ban were counting on precisely that confusion. n30 The calculation was political. Josh Sugarman of the Violence Policy Center argued in 1989 that the public had lost interest in handgun control. n31 He counseled the anti-gun lobby to switch to the "assault weapon issue," n32 which they did in 1989 to great success. n33 In Sugarman's words:

Although handguns claim more than 20,000 lives a year, the issue of handgun restriction consistently remains a non-issue with the vast majority of legislators, the press, and public.... Assault weapons ... are a new topic. The

weapons' menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons - anything that looks like a machine gun is assumed to be a machine gun - can only increase the chance of public support for restrictions on these weapons. n34

[\*1290] One of the most salient descriptions of this maneuver is actually quoted by Justice Thomas in his Stenberg dissent. n35 Commenting on the legislative use of technically inaccurate pejoratives to label regulated activity (e.g., "partial-birth abortion"), Justice Thomas quotes an analysis of the assault weapons legislation:

Prior to 1989, the term "assault weapon" did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of "assault rifles" so as to allow an attack on as many additional firearms as possible on the basis of undefined "evil" appearance. n36

Steven Halbrook clarifies that after World War II, "assault rifle" (compare "assault weapon") became a standard military term to describe a specific type of machine gun:

The official U.S. Department of Defense manual on Communist small arms states: "Assault rifles are short, compact, selective-fire weapons [i.e., machineguns] that fire a cartridge intermediate in power between submachine-gun and rifle cartridges. Assault rifles have mild recoil characteristics and, because of this, are capable of delivering effective full automatic fire at ranges up to 300 meters." The usage became so accepted that the U.S. Supreme Court referred to the American Armed Forces M-16 selective fire rifle as the "standard assault rifle." n37

Despite its dubious origin, the assault weapon designation is now a fixture in the gun-control debate. So while there are disagreements about what, if anything, constitutes an assault weapon, n38 I will use the 1994 ban classifications to talk about them here. Under that legislation, assault weapons are principally semiautomatic n39 rifles, with features like pistol grips, folding stocks, and bayonet lugs, that feed ammunition through a detachable box magazine (DBM). n40

From a crime-control perspective, the regulation of assault weapons is mainly symbolic. n41 I have demonstrated previously that supply [\*1291] restrictions ranging from one-gun-a-month schemes to flat gun bans cannot work without a willingness and ability to reduce supply to levels approaching zero n42 - an impossible feat in a country with 300 million guns tightly held by people who think they are uniquely important tools. n43 Internationally, the defiance ratio in places that have attempted confiscation and registration is 2.6 illegal guns for every legal one. n44 That is just the average. n45 In many countries defiance is far higher. n46 And none of those countries has as deep and entrenched a gun culture as the United States. n47 This remainder problem and defiance impulse mean that we are far past the point where supply restrictions can work.

Moreover, post-Heller, taking the supply to zero is explicitly constitutionally prohibited. This means that prospective supply restrictions on the roughly 1.5% increase in the civilian inventory that occurs each year n48 - some fraction of which are assault weapons - are worse than ineffective because they fuel delusions that something important has happened on the violence policy front. They are worse still where they amount to pandering by people who understand the problem well enough to know that restrictions just on certain guns will consume our energy, but will not reduce gun crime. n49 That said, campaigning for assault weapons bans persists. n50

[\*1292]

## II. Heller's Commonly-Owned Firearms and the Spectrum of Self-Defense Utilities

### A. Heller's Common Firearms for Private Self-Defense

Although Heller has been criticized for failing to resolve all of the questions that swirl around the newly clarified Second Amendment, n51 it does offer a formula for establishing the rough boundaries of protected firearms. n52 Noting that the Court's previous effort in *United States v. Miller* n53 focused less on who is protected and more on what weapons are protected by the Second Amendment, the Heller Court highlights the problematic results of Miller's suggestion that "only those weapons useful in warfare are protected." n54 The Heller majority writes: "We think that Miller's 'ordinary military equipment' language must be read in tandem with what comes after: 'Ordinarily when called

for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time[.]... for lawful purposes like self-defense." n55 With this elaboration, the Court defines the boundaries of constitutionally protected arms.

As a threshold matter, in contrast to the ambiguous implications of Miller, Heller's common-use formula provides a relatively narrow range of protection that easily excludes the vast majority of military arms. n56 Excluded by definition are possibilities that, pre-Heller, were snidely advanced to undercut the individual-rights view - for example, does the Second Amendment mean you can have tactical nuclear weapons and stinger missiles? n57 By definition, any device that would destroy both the self-defender and the attacker in situations that satisfy the imminent threat requirement are outside the envelope. So no, you do not have a Second Amendment right to a nuke, a howitzer, or a stinger, because within the boundaries of private self-defense, they would blow you up too. This does leave room for dispute about fully-automatic infantry rifles. But as a practical matter that question is essentially settled. The Court already has said that machine guns might be excluded. n58 They are [\*1293] numerically uncommon, n59 have been regulated as an exceptional category for decades, n60 and introduction of new ones is barred by law. n61

So if machine guns can be restricted, what about assault weapons? Heller suggests criteria for answering at least part of that question. First, Heller's explicit validation of firearms for self-defense n62 shows that the visceral reaction some people have to guns that seem built for fighting rather than sport n63 is no longer a sufficient gauge of legitimacy. Second, Heller's common self-defense criteria suggests at least two obvious ways to qualify: A gun might be common because it is widely owned - for example, a Remington shotgun with sales in the millions. n64 A gun might also be common because it is functionally the same as other common guns - for example, a custom-made shotgun that operates just like the widely-owned Remington.

#### 1. Are Assault Weapons Numerically Common?

Fundamentally, assault weapons are semiautomatic firearms, distinctions among which border on incoherent. n65 As a type, [\*1294] semiautomatics are quite common. n66 The technology is at least a century old in both handguns and long guns (including rifles and shotguns). n67 For example, the Browning Auto-5 semiautomatic shotgun was introduced in 1902. n68 The Colt 1911 .45-caliber semiautomatic pistol was adopted as the U.S. military sidearm in 1911. n69 The Remington Model 8 semiautomatic rifle was patented in 1900. n70 Even today, with its magazine protruding below the breech, the Model 8 is roughly an assault weapon type. n71 These guns and millions of other semiautomatic rifles, pistols, and shotguns, have circulated in the civilian inventory for generations. n72

Estimating the total number of semiautomatics in the private inventory is difficult. Many were sold before even nominal record-keeping was required under federal law. n73 Many others were sold by the U.S. government under the now-century-old Civilian Marksmanship [\*1295] Program. n74 Still, it is evident that semiautomatics are widely owned. n75 In the early debate over the 1994 ban, researchers from the Harvard School of Public Health surveyed whether people who owned semiautomatic firearms exhibited personal characteristics different from other gun owners. n76 This study reflected the subtext of the 1994 ban that something about the appearance of assault weapons attracted worrisome people, and the researchers pressed this point with the argument that owners of semiautomatic guns reported binge drinking more often than other gun owners. n77 For our purposes, the most significant finding was that sixty percent of gun owners reported owning some type of semiautomatic firearm. n78 This does not mean they all owned the archetypal AR-15. n79 However, it does suggest that a clear majority of gun owners have at least one gun that will fire as fast as they can pull the trigger. So it is just not credible to say that semiautomatic technology is unusual or uncommon.

There is still the question whether the appearance of particular guns somehow makes a difference. I have argued elsewhere that the focus on things like pistol grips, ignoring functionality, borders on the absurd. n80 Even ardent gun-control advocates have called the distinctions "laughable." n81 Groups like the Brady Campaign to Prevent Gun Violence make perfunctory attempts to sustain these distinctions, n82 and the [\*1296] discussion below will address those efforts. n83 But for now, realize that semiautomatics with military features (e.g., pistol grips and bayonet lugs) have dominated firearms sales in recent years, with the AR-15 (the archetypal assault weapon) now the best-selling rifle type in the United States. n84 With Democrats in control of Congress and the White House, it is widely reported that overall sales of semiautomatic rifles have escalated to record levels. n85

#### 2. Are Assault Weapons Functionally Common?

Deciding whether a gun is functionally common requires some context. All guns have SMUs that make them better or worse options as self-defense scenarios shift. n86 The two basic categories of civilian firearms, long guns and handguns, exhibit respective SMUs of superior [\*1297] ballistics n87 and concealability. n88 The handgun's concealability also produces the greatest externalities. n89 Most gun crime is handgun crime. n90

Cutting the categories more finely, both long guns and handguns come in a range of ballistic variations (firing low, intermediate, or high-powered ammunition) n91 and a variety of repeating technologies. Fully automatic repeaters (true machine guns) are rare in civilian hands. n92 Semiautomatics, including assault weapons, use part of the energy from the fired cartridge to reset the firing mechanism. n93 Other sorts of repeating technologies use a combination of muscle and mechanical power. n94 Some of these technologies are exactly as fast as semiautomatic technology. For example, double-action revolver technology (in both handguns and some long guns) fires with each pull of the trigger like a semiautomatic. n95 Manual repeaters - for example, cowboy-style lever actions, pump actions, and bolt actions - will be slower than semiautomatics by fractions of seconds to multiple seconds, depending in part on the proficiency of the user. n96 Multi-barrel technology may be [\*1298] faster than semiautomatic but typically with fewer shots available before reloading. n97 Finally, repeating multi-projectile technology (i.e., semiautomatic, pump, or lever-action shotguns) actually fires more projectiles faster than any of the rifles designated as assault weapons. n98

Granting the assault weapons designation a rational construction, the objection must be to multishot capability. n99 The DBM ammunition feeding device is central to the designation. n100 For policymakers who seem to have devised ban lists by searching picture books for guns that looked scary, n101 it is understandable that the DBM, a visually distinct multishot feature, would stand out. But is it unusual enough to fail Heller's common-use test?

Semiautomatic guns employing the DBM are a century old. n102 Many DBM guns avoid the assault weapons designation because they do not have pistol grips, adjustable stocks, or bayonet lugs. n103 I criticized early on that such distinctions are functionally incoherent. n104 For example, under the 1994 ban, the very same DBM gun was both legal and illegal depending on whether someone dropped it into a different stock. n105 There is no empirical evidence, and it is hard even to imagine plausible arguments, that features like pistol grips, bayonet lugs, and folding stocks produce different - let alone special or extraordinary - externalities. n106

[\*1299] The better explanation for these distinctions is symbolism. The objection was that assault weapon features were combat features; assault weapons were illegitimate because they were openly geared for gun fighting. n107 Before Heller, such distinctions could be explained by the formulation that the only legitimate guns were "sporting" guns. As a matter of policy, self-defense was submerged and even stigmatized. n108 Guns purely for defense against human aggressors, signaled in the minds of some by bayonet lugs and adjustable stocks, could be marginalized and outlawed. n109 With Heller's explicit protection of handguns and other common self-defense guns, n110 the "sporting use" filter and corresponding distinctions based on appearance cannot be sustained. n111 So not only are these distinctions in appearance functionally irrelevant, post-Heller they are impermissible.

This still leaves the question whether semiautomatics, and particularly semiautomatics that use DBMs, are functionally distinct. The contention is these guns have exceptional multishot capabilities. n112 This is just wrong. Multishot utility does not distinguish the assault weapon. The assault weapon is surpassed in this category by a class of indisputably common guns that fire multiple projectiles per trigger pull and can be continuously reloaded without disabling the weapon. The category is the ubiquitous shotgun, in either semiautomatic or manual repeating mode. n113

The assault weapon has been identified as a "spray-fire" weapon designed for shooting multiple projectiles without aiming. n114 This is [\*1300] false. n115 The shotgun better fits that description. It is designed to hit moving or multiple targets with a cloud of projectiles, a stream of spherical "shot." n116 Depending on the loading, the number of projectiles will range from six large projectiles to hundreds of tiny spheres smaller than a BB. n117 Shotguns do not require traditional "aiming" and do not even have traditional sights (i.e., a rear sight through which one aligns with the front sight to ensure a straight line between shooter's eye and the target). n118 Most shotguns have a simple bead at the front. n119 Shotgunners will comment that they never noticed that the bead was missing, because shotguns fire to, and impact, a visual swath rather than a precise point of aim. n120 In contrast, a rifle without its sights is relatively nonfunctional. All common rifles of every configuration shoot a single projectile per cycle in a straight path. n121 No matter how quickly they cycle, hitting targets reliably requires aiming. n122

Another distinction between assault weapons and the shotgun is that the shotgun ammunition supply can be "topped off." Most repeating shotguns store ammunition in a tube magazine directly below the barrel. n123 The next round is moved from the tube into the chamber either [\*1301] by recoil energy (for semiautomatics), or manually for pump or slide actions. n124 While the gun is deployed, the ammunition tube may be continuously refreshed with new rounds.

n125 There is no downtime to reload. n126 So not only are assault weapons unexceptional in multishot utility, they are demonstrably inferior to the ubiquitous shotgun. n127

Comparisons between assault weapons and other repeating technologies produce similar conclusions. DBM semiautomatics like the AR-15 are reloaded from the bottom of the breech by replacing the spent magazine with a new one. n128 In contrast, the top-loading block clip employed by the semiautomatic M1 Garand (and also by one of the very first semiautomatic rifles, the Mannlicher Model 1886) will achieve roughly the same practical rate of fire in addition to firing a more powerful cartridge than the typical assault weapon. n129 After all the rounds are fired, the block clip ejects automatically from the top of the breech, and the shooter inserts a new clip into the open breech. n130 The Garand was the standard World War II battle rifle and surplus Garands have been sold directly to private citizens by the U.S. government for decades through the Civilian Marksmanship Program. n131

Lever action rifles, familiar emblems of the Old West with typical ammunition capacity from ten to sixteen rounds, predate semiautomatic technology but are only slightly slower in multishot capability. n132 They also are continuously reloadable. n133 Revolver technology of the same [\*1302] vintage is essentially indistinguishable from semiautomatic in terms of practical rate of fire (one shot for every trigger pull). n134

So in context, it is difficult to say that assault weapons impose multishot capabilities that are functionally distinct from many other guns in the inventory of common firearms. Moreover, the entire focus on multishot capacity is undercut by the fact that all guns are deadly, all guns have distinct SMUs, and those utilities produce their own distinct externalities. The handgun, which is explicitly protected by Heller, accounts for most gun crime. n135 Assault weapons, in contrast, are very rarely used in crime. n136 So on this measure as well, the assault weapon is easily within the boundaries of protected firearms.

#### B. The Regulatory Paradox: Special Marginal Utilities and Peculiar Externalities

Within the inventory of common firearms, each gun type has distinct utilities at the margin that make it more or less suitable as self-defense scenarios shift. These differences in SMUs are crucial to the assault weapons distinction, but they also present a paradox. To satisfy even a threshold rational-basis analysis, the state must show that banned assault weapons have some identifiable SMUs that produces special externalities when abused. n137 Thus the paradox: if the distinction is sound - if the ban is rational - it also is an admission of special utility. And that paradox poses a pivotal constitutional question. As Justice Breyer and others have criticized, Heller does not tell us how to cut such knots. n138 But Stenberg does.

The controlling question in Stenberg was whether the banned D&X abortion procedure was sometimes the better methodology for preservation of the life or health of the mother. n139 Because D&X was found to be necessary in rare cases to preserve the life or health of the mother, the ban was deemed unconstitutional. n140 This section will examine the parallel assault weapons question: do the SMUs exhibited by assault weapons make them better alternatives than other common guns in a particular spectrum of self-defense scenarios, where by [\*1303] definition the life of the right-bearer is at stake? Subsection 1 will describe purely objective SMUs - physical measures that can be precisely calculated. Subsection 2 will summarize "tactical" SMUs - more subjective assessments that rely on human judgments about the relative effectiveness of different technologies.

##### 1. Objectively Measurable Utility

The typical assault weapon fires an intermediate power cartridge that is less destructive than cartridges employed in sporting rifles (many of them semiautomatics) used for hunting medium to large game. n141 So on this criteria the typical assault weapon actually complements the state's interest in reducing firearms externalities. An explicit comparison is helpful.

Consider first the AR-15. n142 It is the quintessential assault weapon. It exhibits all of the objectionable features identified in the 1994 ban. n143 It typically fires a lightweight 55 to 62 grain, .223 caliber/5.56MM projectile. n144 In contrast, most hunting rifles that were broadly exempted from the 1994 ban are ballistically far superior to the AR-15. n145 Many of them are DBM, semiautomatic repeaters chambered for cartridges like the .30-06 Springfield, n146 which fires bullets three to four times heavier than the .223. n147 Two prominent examples are the Remington 7400 n148 and the Browning BAR, both explicitly excluded from the 1994 ban. n149 Also excluded was the M1 Garand, n150 the U.S. Army battle rifle used in World War II and featured prominently in the film Saving Private Ryan. n151 In [\*1304] appearance the Garand seems closer to the Remington or the Browning. It features a traditional wood stock and has none of the typical assault weapon features except for an unobtrusive bayonet lug. n152

The .30-06 cartridge, fired by the Remington, the Browning, and the Garand as fast as one can pull the trigger, propels a 150-grain bullet (nearly three times heavier than the 55-grain projectile typical for the AR-15) at 3100 feet per second producing muzzle energy of 3200 foot-pounds. n153 At 400 yards it is still traveling at 2058 feet per second, carrying 1410 foot-pounds of energy. n154 In contrast, the far smaller and lighter .223 fired by the aggressively-styled AR-15 produces 1282 foot-pounds of energy at the muzzle and 296 foot-pounds at 400 yards. n155 These measures for the .223 are from a test barrel that is typically six to eight inches longer than the sixteen-inch barrel of the most aggressively styled "M4 clone" version of the AR-15 (distinguished by the shorter barrel and adjustable stock). n156 As barrel length decreases, so does destructive energy because the pressure in the short barrel is dissipated in the atmosphere instead of building behind the bullet for a longer time and space. n157

The physics are plain. The 1994 ban outlawed guns that are demonstrably less lethal than millions of government-approved "sporting" guns and countless actual military rifles that just do not look very dangerous. The ballistic superiority of many sporting guns is not a function of more recent or more advanced technology; some of the earliest semiautomatic "sporting" rifles manufactured in America produce more destructive energy than the AR-15. n158 Moreover, many exempt semiautomatic "sporting" rifles are available in cartridges that are ballistically superior even to the .30-06. For example, the previously-discussed Remington and Browning semiautomatics are available in [\*1305] magnum calibers like the .338 Winchester Magnum, which generates nearly double the ballistic energy of .30-06 (again, firing as fast as one can pull the trigger). n159

True, at some point discussions about muzzle energy become moot. The practical difference between the .30-06 and the .338 in terms of lethality at usable distances may be negligible. But that is because both calibers are in the same ballistic category. n160 However, the intermediate cartridges fired by the typical assault weapon are in a lower power class. n161 They are less lethal across their entire ballistic range. n162 Indeed, as a hunting cartridge, the .223 (the AR-15 cartridge) is widely considered suitable only for "varmints" (e.g., ground squirrels or prairie dogs). In many places it is illegal for hunting deer or other medium-to-large game because it tends just to wound rather than cleanly kill the animal. n163

The ballistic inferiority of the assault weapon is a matter of conscious design. n164 The typical assault weapon cartridge is explicitly intended to wound rather than kill. n165 So ballistically, not only is the AR-15 not exceptionally dangerous, its lower lethality actually complements the state interest in controlling negative externalities. And from the perspective of the gun user, these ballistic characteristics translate into another important utility.

For many older, weaker, or smaller people, the relatively low-powered assault weapon offers an easier learning curve, less punishing practice, and an ease of use that is unmatched by other choices. The semiautomatic configuration, whose repeating mechanism uses some of the energy that otherwise would contribute to recoil, makes the gun more manageable than other technologies firing the same cartridge. n166 [\*1306] Comparatively, the substantial recoil from the shotgun disqualifies it as a defensive tool for many people. n167 The same is true for medium-to-large game sporting rifles. n168 The recoil from many of these is punishing, bruising, and makes practice, and therefore proficiency, difficult. n169 Even the M1 Garand, though its recoil is reduced by its semiautomatic design, produces comparatively much greater recoil because it fires the powerful .30-06 cartridge. n170 The Garand is also relatively heavy and long, making it generally difficult for smaller people to manipulate. n171

Assault weapons also present ergonomic and operational advantages over alternatives. The typical assault weapon is easily fixed with optics that enhance aiming and accuracy. n172 The carbine length of the typical [\*1307] assault weapon exploits the long-gun's more stable sighting platform (the shooter stabilizes the gun at four contact points - two hands, the shoulder pocket, and the cheek weld). n173 The handgun, in contrast, is more difficult to hold steady. Even with a two-handed hold it enjoys half the contact points of the long gun, and then requires the user to employ open sights, which means aligning three different planes of sight (rear sight, front sight, and target). n174 This is harder to do as people age. n175 Moreover, at any age, proficiency with the handgun requires more practice and a higher level of skill and dexterity. In fact, some double action revolvers have such heavy trigger pulls that many adults cannot operate them. n176

## 2. Tactical (Subjective) Special Marginal Utilities

Some assault weapon SMUs are more subjective in the sense that users, both ordinary and expert, will exhibit different personal preferences for them as self-defense scenarios shift. n177 Among professional trainers of both police and civilians, the assault weapon is widely recommended as the most versatile and effective self-defense tool. n178 Professional instructors list ruggedness, ergonomics, accuracy, low recoil, versatility, and other tactical advantages that

make the assault weapon a premium self-defense technology. n179 This is especially true for the AR-15, whose military and law enforcement pedigree means that "the top tactical minds of our generation have figured out the best ways to use AR-platform guns in all sorts of scenarios." n180 Because the assault weapon typically fires a ballistically intermediate round, it recoils less [\*1308] than high-power or magnum guns. n181 So owners of assault weapons will tend to practice more and thus should be more capable in emergencies. n182

A separate utility appears in the militia context. As elaborated in *Heller*, the Second Amendment protects the armed citizenry from which the militia may be drawn. n183 In emergencies, citizens appearing with their own guns become a public resource. n184 People will dispute the usefulness of the unorganized militia in modern America, but with its constitutional pedigree established in *Heller*, it is an important question whether certain types of guns serve that interest more than others.

The assault weapon is the quintessential militia rifle. The AR-15, for example, is a semiautomatic rendition of the U.S. military infantry rifle, with the important difference that it does not have automatic or burst-fire capability. n185 But otherwise, the mechanics and controls are the same and it uses the same magazines and ammunition. n186 In emergencies where the militia becomes an important resource, civilians who are familiar with or own such guns will be more useful than others as adjuncts to public security forces.

While the militia utility anticipates a community response to public emergencies, public emergencies also generate private risks. In other work, I have described private guns held for these occasions as "stormy-day" guns n187 - firearms held for episodes like those anticipated by the National Governors Association when it complained that the heavy use of the National Guard in war fighting leaves states vulnerable in an array of public emergencies. n188 The assault weapon is the model stormy-day gun. Its multishot capability neutralizes the numerical advantage of multiple aggressors or a mob. n189 The intermediate cartridge operates to [\*1309] neutralize both a wounded attacker and his caretakers. n190 This same feature lessens the burden on innocents when the gun is abused. n191 The appearance of the assault weapon is distinct enough even at a distance to achieve deterrence by brandishing. n192 Other guns are decidedly inferior stormy-day options. The handgun, by definition a last-ditch tool limited essentially to contact distance, would be useful only at distances where it may be too late to fight back. n193 Shotguns and hunting-caliber rifles are inferior because they recoil harder and thus are harder - and for some, impossible - to use. n194 The rational actor, thinking about self-defense under a range of circumstances, has sound reasons to count the assault weapon as the best alternative in the inventory of common firearms.

### III. Assault Weapon Bans and the Stenberg Standard

The discussion so far shows that assault weapons fit comfortably within the category of common firearms nominally protected under *Heller* n195 and that they exhibit SMUs that are especially important to particular types of people and in particular categories of self-defense. But what happens when the SMUs of common firearms are claimed to produce peculiar externalities that the state wants to combat by banning them? The question takes us beyond *Heller*. But it is the core of *Stenberg*. Substituting firearms "technologies" for abortion "methodologies," whether to protect the special life-saving utilities of assault weapons against a government ban that forces reliance on lesser alternatives, is the question of principle answered in *Stenberg*.

At first glance the assertion of broad parallels between abortion and gun rights jurisprudence seems odd. However, on core principles there is a broad intersection between the two claims. This is evident from the many treatments that build the abortion right on the self-defense principles that undergird *Heller*.

More than a decade ago, I showed that the ideas and principles used by the Court and scholars to draw the unenumerated right to abortion out of the Constitution run remarkably parallel to, and in core cases build directly upon, arguments and principles supporting a constitutional [\*1310] right to arms for self-defense. n196 That article, *Principles and Passions*, argued that the "standard position of the left" perversely disparages claims of a right to armed self-defense under the Second Amendment, but exalts a derivative and relatively weaker unenumerated right to abortion. n197 As the analysis here will show, the standard position endures and is reflected in the abortion and gun jurisprudence of the Court's liberal wing. This, attitudinalists will say, is exactly what we should expect. n198

I will show here how the assault weapons question raises parallel issues of special self-defense utility and how the Court's treatments of the abortion and gun questions invoke the attitudinalist critique. Section A summarizes the argument that there are controlling parallels between the abortion and gun rights claims. Section B extends that argument to the particular parallels between assault weapons and partial-birth abortion as evaluated under *Stenberg*, and illustrates the burden of principle *Stenberg* poses for the liberal wing of the Court. Section C incorporates the Court's



treatment of partial-birth abortion in Gonzales which, in its constriction of Stenberg, poses for Court conservatives a similar but lesser rendition of the attitudinalist challenge.

#### A. Self-Defense and the Derivative Right to Abortion

As I highlighted in *Principles and Passions*, one of the obvious illustrations of the abortion / gun rights parallel is Donald Regan's effort to situate the abortion right within the spectrum of permissible self-defense scenarios. n199 Regan begins with the model case of self-defense against a willful criminal attacker. n200 After many contortions, he plots at the far end of the self-defense spectrum several weaker scenarios he says are analogous to the self-defense claim of a woman who chooses abortion in order to avoid the physical trauma of child birth. n201 Regan's analysis is particularly important because it shows the relative strengths of the abortion and self-defense claims. The strongest abortion claim is where the mother risks death or serious injury by continuing the pregnancy. In those narrow circumstances, abortion is just like the model self-defense case. n202 But in the vast majority of abortions there is no [\*1311] threat to the life of the mother. n203 So under Regan's analysis, most abortion claims are qualitatively weaker than most self-defense claims.

Regan's arguments have generated a wide following, and were even invoked by Justice (then Judge) Ginsburg in her own commentary supporting the abortion right. n204 Regan's is one of many essays and articles that I critiqued in *Principles and Passions*. n205 A second is Judith Thomson's effort to justify abortion as a matter of moral philosophy. n206 Cass Sunstein has said that Thomson and Regan provide the strongest justifications for a constitutional right to abortion. n207

Through a series of self-defense analogies, Thomson argues that, even conceding that the fetus is a person at conception, with a life-interest equal to the mother's, abortion still can be justified. n208 She posits the case of a mother trapped in a very small house with a rapidly growing child. n209 The child is growing at such a rate that it threatens to crush the mother against the walls of the house. n210 Here, she insists, we cannot say that the mother "can do nothing, that [the mother] cannot attack it to save [her] life." n211 Her analysis rests on a right of self-defense that she presumes is a universal value so fundamental that it can carry by slim analogy n212 a broad right to abortion. n213

In 1989, Susan Estrich and Kathleen Sullivan argued, among other things, that abortion was at the heart of constitutionally protected choices because "few decisions can more importantly alter the course of one's life than the decision to bring a child into the world." n214 The self- [\*1312] defense choice presents obviously higher stakes. It is not the course of one's life, but one's very existence that is at stake.

Estrich and Sullivan presented their arguments explicitly as an appeal to Justice O'Connor, at the time the only woman on the Court. n215 By 1992, Justice O'Connor stood with the majority in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, concluding that the abortion right involves choices "central to personal dignity and autonomy, [that] are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." n216 Liberty, said the Court, includes more than those rights already guaranteed by the first eight Amendments to the Constitution. n217 The Court further explained that the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. n218

It is fair then to consider the first eight Amendments - including a right to arms now affirmed in *Heller* - as the foundation of liberty guaranteed by the Fourteenth Amendment. The abortion right, plainly unenumerated, may be harder to extract but still can be plausibly inferred. The irony of the standard position is the suggestion that the Constitution inferentially protects the abortion right, but not the gun right that is rooted explicitly in the text.

Within the broader abortion / gun rights intersection, the comparison between partial-birth abortion and assault weapons claims is apt, both analytically and politically. From the view of the opposition, both assault weapons and partial-birth abortion are extreme manifestations of the contested right. n219 Both are contrasted to other less controversial manifestations of the broader right and those alternatives feed arguments that the right can be respected without permitting these especially aggressive, unnecessary, or unjustifiable renditions of it. As a quantitative matter, both represent a fraction of what opponents object [\*1313] to. n220 Both present a tragedy of competing interests - neither the mother nor the self-defender wants to destroy another life-interest and each is pushed by exigency to the decision. Both are vigorously defended by supporters on the view that the constitutional protection is fragile and that

defeat in this limited context would not end the controversy, but just embolden opponents who oppose the right absolutely. n221 Both demand analysis that many people find repugnant - for example, the graphic comparisons of late term abortion procedures or discussions of relative wound ballistics between assault weapons and hunting rifles.

#### B. A Right to Better Methodologies for Preserving Life and Health: Stenberg, Gonzales, and the Attitudinalist Challenge

Dissenting in *Heller*, Justice Breyer complained that the majority failed to supply a standard of review for future cases. n222 Ironically, on the discrete question of assault weapons, Justice Breyer's majority opinion in *Stenberg* provides an especially apt methodology for administering the competing interests of the right-bearer and the state.

*Stenberg* involved a challenge to Nebraska's ban on the controversial D&X abortion procedure, described by the statute as "partial birth abortion." n223 The Court held the statute unconstitutional because it failed to include an exception where the doctor judged the procedure necessary to protect the life or health of the mother. n224 A very similar procedure, D&E (which Justice Stevens argued is nearly indistinguishable from D&X) n225 remained legal, as did the full range of less controversial, earlier-term abortion procedures. n226 So, just like the assault weapons case, the Court already had recognized the core right (abortion) but now wrestled with the right-bearer's claim to a particular controversial variation.

*Stenberg*'s protection of methodological variations best suited to saving the life of the right-bearer extends smoothly to the assault weapons question, and on several points actually applies more easily to the assault weapons case. This raises for the *Stenberg* majority the attitudinalist challenge. Is *Stenberg* advanced on a point of principle? If so, then it should extend to the demonstrably easier case of assault weapons. Perhaps, though, *Stenberg* just confirms the attitudinalist proposition and is a predictable manifestation of the standard position - unprincipled, political, a mere reflection of tribal allegiances. If so, then [\*1314] the assault weapons claim, though stronger, will be denied the protections Court liberals established for partial-birth abortion. n227

As summarized in the Introduction, the Court treated the partial-birth abortion question again in *Gonzales v. Carhart*. n228 This time, Court conservatives were in the majority and they predictably resurrected several of the arguments from their dissents in *Stenberg* - arguments that weaken *Stenberg* and diminish the support the assault weapons claim draws from it. n229 *Gonzales*, for example, gives the state more leeway to restrict methodologies "necessary" to protect the life of the right-bearer, where adequate alternatives are available. n230 This and other arguments advanced in *Gonzales* may ultimately expose Court conservatives to the attitudinalist challenge.

Subsection 1 will elaborate the parallels between the assault weapons and partial-birth abortion claims, apply the principles developed by the *Stenberg* majority to the assault weapons claim, and elaborate the attitudinalists' challenge that *Stenberg* poses for Court liberals. Subsection 2 will focus on the dissenters' criticisms of *Stenberg* to show how the parallel assault weapons question avoids those objections and is thus the stronger claim. Subsection 3 will evaluate how *Gonzales*, which diminishes *Stenberg* in key areas, raises the attitudinalist challenge for Court conservatives.

##### 1. *Stenberg* Principles and the Assault Weapons Intersection

*Stenberg* protects the right-bearer's access to marginally better methods of abortion where her life or health is at stake. n231 This right to "better" variations of the broadly protected right to abortion prevails in the face of empirical dispute over whether the methodology really is better, n232 over empirical objections that it is actually worse (riskier), n233 over objections that it cannot really be distinguished from other available methodologies, n234 and over objections that the state's interest in regulating the procedure is extraordinarily powerful, because it borders [\*1315] on infanticide. n235 These positions and the principles that support them transfer readily to the assault weapons question.

##### a. Protecting Best Methodologies for Preservation of Life and Health

The *Stenberg* majority flatly rejects the assertion that the constitutional right to abortion is adequately respected by the availability of safe alternatives to the disputed D&X procedure. n236 Writing for the majority, Justice Breyer makes plain that where the woman's life or health is at stake, she is entitled to the superior abortion procedure. n237 Even postviability, the government's interest in the life of the fetus must give way to medical judgments that the procedure is necessary to preserve the life or health of the mother. n238

*Stenberg*'s protection of better methodologies for exercising a core constitutional right speaks squarely to the self-defender's parallel interest in the best tool for particular categories of self-defense. n239 Indeed, people who cannot

manage the weight or recoil of a heavier, more powerful gun, or the dexterity demands of the handgun, n240 have a substantially different and stronger claim. For them, the assault weapon may always be the better alternative.

b. The Dispositive Empirical Question: Is the Disputed Methodology Never the Best Option?

The empirical debate over whether D&X is ever the best alternative for saving the life or health of the mother sharpens the core message of Stenberg: If the state can show that the contested methodology is never the best option for protecting life or health, then the partial-birth abortion ban is permissible. n241 According to the majority, the State simply [\*1316] failed on the factual showing. n242 On the view of at least some medical experts, D&X "may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman." n243 In the assault weapon context the state would face the equivalent burden of showing that assault weapons are never the best self-defense option. This is difficult first because of the regulatory paradox (i.e., the claim of special externalities is also an admission of special utility). n244 Also the claimant's burden is comparatively easier because assault weapon utility is easier to quantify than partial-birth abortion utility. n245 Partial-birth abortion utility is controversial because of disputes between doctors that are in part subjective - a function of what methodology particular doctors prefer. n246 Assertions of assault weapon utility - lower recoil, less lethal ammunition - are grounded on less contestable, objectively measurable physical characteristics. n247

Stenberg's "never the best option" filter also helps define the proper scope of state regulation in a way that supplements Heller's common-use test. The demand in at least some cases that the disputed methodology be the superior option means that firearms that are always inferior and which impose special externalities would not be protected. For example, unreliable, inaccurate guns that are prone to malfunctioning or injuring the user, like the infamous zip gun n248 or the poorly identified "Saturday Night Special," n249 might be banned on the argument that they are universally inferior and often used by people who are prohibited from having guns. n250

[\*1317]

c. Disputed Utility: Rarity

The State argued in Stenberg that the D&X procedure was not a protected methodology because it was very rarely used. n251 Only a very small fraction n252 of the million or so abortions per year are D&X procedures. n253 And only a fraction of that fraction involve a threat to the life of the mother. n254 The majority rejected this argument, ruling that a burden on a particular methodology "unduly burdens the right to choose abortion itself." n255 Rarity of the procedure, said Justice Breyer, "is not highly relevant." n256 The deciding focus is those occasions that "could strike anyone" where D&X is the best methodology. n257 "The State cannot prohibit a person from obtaining treatment simply by pointing out that most people do not need it." n258

In the gun context, this answers the criticism that stormy days of high assault weapons utility are thankfully rare. Rarity, Justice Breyer emphasizes, "is not highly relevant." n259 The deciding factor is that assault weapons exhibit special utilities in particular scenarios, "which could strike anyone." n260 The state cannot deny right-bearers who require the SMUs of assault weapons on the argument that "most people do not need" them. n261

Realize also that the rarity-parallel gains an extra feature in the assault weapons case because the assault weapon is not just a stormy-day tool. For smaller, weaker people, strength and dexterity requirements of shotguns or handguns eliminate them entirely as alternatives. n262 For many of those people, assault weapons might always be better self-defense tools.

[\*1318] The Stenberg Court takes the point a step further, acknowledging that rarity might reflect that D&X truly has no special utility. n263 Empirically there was strong evidence to support this, n264 but the dispute was resolved in favor of the right-bearer. n265 So even if there is dispute about stormy-day utility or whether assault weapons are a better choice for people who cannot be proficient with other guns, Stenberg principles dictate that plausible claims of SMU trump gun bans. Remember also the state's dilemma. Unless the assault weapon does in fact have some special utility, the initial decision to ban it is not even rational. n266 But, says Stenberg, once demonstrated, this utility, even if rarely accessed, trumps the state's countervailing interest. n267

d. Asserted Disutility: The Contested Methodology Imposes Greater Risks than Available Alternatives

One contention in Stenberg was that the D&X procedure actually posed a greater health risk to the mother than available alternatives. n268 The district court rejected this claim on the evidence, n269 but the argument opens a useful

comparison to the assault weapons question. First of all, no one has shown, and no facts suggest, that the assault weapon presents a greater risk to the user than other types of firearms. On this point the assault weapons claim is stronger.

Some will object that the proper question is whether the assault weapon poses peculiar externalities - risks to the population at large. But even loosening the analogy to accommodate that question, the argument that the assault weapon poses greater risks does not survive the factual inquiry. It is indisputable that the handgun inflicts exponentially greater costs than the assault weapon. n270 Also, the typical assault weapon, which by definition fires an intermediate cartridge, is ballistically inferior to most deer rifles (many of which are semiautomatics), n271 so it actually complements the state interest in limiting negative externalities.

[\*1319] Finally, any argument that the assault weapon imposes special net risks is difficult to sustain because the utilities and the externalities of all firearms are just different sides of the same coin. The things that make the assault weapon or any other gun useful for legitimate self-defense become negative externalities where the gun is used for crime. The assault weapons distinction rests on the implausible assertion that particular features have personalities - with some features dedicated to good and others committed to evil. The truth, of course, is that guns and their features function the same way no matter who operates them. So if the assault weapon has a distinct SMU, right-bearers generally will have an interest in it that Stenberg says we must respect.

#### c. Disputed Utility: Erring for the Right-Bearer

Acknowledging the deep dispute over the utility of D&X, the Stenberg majority protected the abortion right by resolving ambiguities against the government. n272 The empirical case for D&X utility was so deeply contested that the Court did not demand "absolute proof" of SMU. n273 "Unanimity of medical opinion" was not required, and the Court resolved the "differences of medical opinion" about the utility of D&X in favor of the mother in order to avoid "unnecessary risk of tragic health consequences." n274 And if it turns out the Court is wrong about the utility of D&X, said Justice Breyer, then that is a lesser harm because "the exception will simply turn out to have been unnecessary." n275

The parallel assault weapons claim is clearer and easier to evaluate because much of it is objectively measurable (i.e., weight, recoil, and lower lethality). These factors weigh in favor of assault weapons protection without resort to the Stenberg principle of erring for the right-bearer. It is only in the context of the subjective SMUs (which are not essential to establish the claim) that the assault weapons claim might require Stenberg burden-shifting. And even on these subjective measures, the assault weapons argument is stronger than the Stenberg abortion claim.

Stenberg recites the deep divisions among experts about the utility of D&X. n276 Even though the American College of Obstetricians and [\*1320] Gynecologists' report "could identify no circumstances under which [D&X] would be the only option to save the life or preserve the health of the woman," the Court protected the procedure on the authority of other expert testimony. n277 There is nothing close to this type of dispute about the subjective SMUs of the assault weapon. Indeed, the assertion of special externalities, and thus special utility, is what prompts assault weapons regulation in the first place. n278 However, even where the state manages a plausible argument that assault weapons present more costs than benefits, n279 Stenberg resolves doubt in favor of the right-bearer. n280

#### f. A Critique of Irrational Distinctions

Justice Breyer argues that the Nebraska statute does not really further the state's asserted interest in the "potentiality" of human life - that it is not geared to actually save any particular fetus from destruction because it only affects a rare method of abortion and abortion by other methods is freely available. n281 So the rationale for the partial-birth abortion ban is illusory because abortion is a broadly protected constitutional right that unquestionably could be exercised through alternative means. Indeed, Justice Breyer contends that the D&X ban is irrational because the statute makes it hard to distinguish between D&X and the ostensibly legal D&E procedure. n282 So even the interest in avoiding destruction of the fetus through a particularly troublesome methodology is not achieved. Justice Stevens's short concurrence puts the argument bluntly: the Nebraska statute is not rational because there is no reason to believe that the banned procedure is any "more brutal, more gruesome, or less respectful of 'potential life'" than the permitted procedure. n283

[\*1321] Here Justices Stevens and Breyer track almost exactly criticisms that I and others leveled at the 1994 ban. I argued that banning the AR-15 and exempting the visually-distinct but functionally-equivalent Mini-14 was incoherent - that distinctions elevating appearance over function were silly. n284 The assault weapons distinction is incoherent because multiple other guns remain available, all of them are similarly deadly, many of them are objectively more lethal

than the assault weapon, and an entire category of explicitly constitutionally protected guns (handguns) account for the vast majority of gun crime. n285 Tracking Justice Stevens's Stenberg argument, how does a ban on semiautomatic guns with pistol grips and folding stocks serve the state interest in limiting firearms externalities when functionally identical and far more destructive guns are explicitly permitted in the same legislation and are otherwise constitutionally protected?

Ultimately we know that "assault weapon" is a political designation that breathed life into the waning handgun prohibition movement and was calculated to avoid the wrath of hunters by exempting millions of more-lethal semiautomatic "sporting" guns. n286 But this only makes the earlier point another way. Semiautomatic guns are and long have been a significant fraction of the inventory of civilian firearms. n287 Assault weapons, distinguished primarily by appearance, n288 are a functionally indistinct and irrational classification.

g. Attitudinalism and the Cringe Factor

All of the Stenberg opinions, particularly the dissents, labor over the particulars of the contested abortion procedures. n289 Justices Thomas and Kennedy both present the gruesome details almost as if the description alone should settle things. n290 If the dispute really comes down to this, the attitudinalist claim that passions trump principles is compelling. n291

[\*1322] The Stenberg dissenters argue that even the technical, clinical description of the disputed procedure is grotesque. n292 Even Justice Breyer [\*1323] acknowledges, "our discussion may seem ... horrifying." n293 The details of the assault weapon ballistics argument will strike some people the same way. Consider, for example, Dr. Martin Fackler's illustration of the comparatively less lethal characteristics of the assault weapon projectile: "[Assertions that assault weapon bullets are especially destructive] must cause the thinking individual to ask: ... how is it possible that twenty-nine children and one teacher out of thirty-five hit in the Stockton schoolyard survived ... ?" n294 Dr. Fackler's point is that assault weapons fire an intermediate round "designed to limit tissue disruption - to wound rather than kill." n295 One response is that this large number of people would not have been shot but for the assault weapon. The rebuttal unfortunately is that the unilaterally armed assailant is at no practical disadvantage for having to top off or reload any of the other common firearms technologies. n296 Defenseless people are no better off whether their assailant is using a continuously reloadable shotgun, 100-year-old lever-action rifle, or a revolver that takes seconds to reload. n297 The broader point is that some may find this whole conversation as repulsive as others find Justices Breyer's and Stevens's arguments that D&X and D&E are so similarly grotesque that the state cannot rationally discriminate between the two. n298 One wonders whether principles, constitutional or otherwise, can compete with the passions stirred by questions.

[\*1324]

2. The Stenberg Dissents

There are, of course, distinctions between the ideas that ground abortion and gun rights, but mainly those distinctions show that the abortion right is on more tenuous footing. n299 This subsection elaborates those distinctions by reference to the dissenters' criticisms of the Stenberg majority.

a. Kennedy in Dissent

i. Government's Countervailing Interest: Promoting Respect for Human Life and the Impulse for Irrational Assault Weapon Definitions

Justice Kennedy argues that the majority fails to respect *Planned Parenthood of Southeastern Pennsylvania v. Casey*, in which the Court validated the state's substantial countervailing interest in "promoting the life of the unborn and ... ensuring respect for all human life and its potential" n300 and combating things that cause society to become "insensitive, even disdainful, to life." n301 Justice Kennedy's lament comes closer to capturing the impulse for assault weapons bans than anything offered in legislative preambles. n302

Although assault weapon classifications make little sense functionally, they do successfully stigmatize fighting tools. This explains the typical exemptions for functionally identical guns (just as effective for fighting) that by appearance seem more like sporting tools. I have criticized this elevation of appearance over function as silly, but Justice Kennedy's "insensitivity to life" theme evokes a symbolism that renders assault weapon distinctions entirely understandable. A seminar student several years ago gave voice to it. In a deeply emotional reaction to a discussion of

the irrational classifications in the 1994 ban, she said she did [\*1325] not want to be part of a society in which people owned assault weapons. It was irrelevant to her that two guns would kill the same way, that they were identical in function. It was vital to her that one gun by its appearance seemed clearly "intended" only for fighting! There was something wrong with a society that allowed such things and something wrong with people who owned them. Her essential anguish tracked Justice Kennedy's criticism. The appearance of the guns suggests we are insensitive to the value of life. Ignoring the root political calculations, this is the purest form of the impulse for assault weapons restrictions.

The answer to this is straightforward. Post-Heller, firearms for self-defense against criminal attackers are at the core of the Second Amendment right. n303 The sporting-use designation, a key feature of federal importation rules n304 that seeped into general questions of firearms legitimacy, is now just a vestige of the pre-Heller world. So while the impulse to ban assault weapons is understandably rooted in the symbolism of the sporting-use designation, Heller's protection of ordinary self-defense guns nullifies the sporting use filter and places self-defense utility at the center of the constitutional inquiry. n305

Justice Kennedy argues that the state has an interest in declaring critical moral differences between the permitted D&E and the restricted D&X procedures. n306 The state, he says, need not be indifferent to a procedure that uses the natural delivery process to kill the fetus. n307 This is a fair analogue to the argument that the state has an interest in preventing citizens from defending themselves with guns that look like weapons of war, and that "silly" n308 distinctions based on appearance actually reflect important moral judgments.

One answer is that the distinctions used to classify some semiautomatic guns as assault weapons are hardly perceptible and others are nebulous. For example, one of the things necessary to make a prohibited gun legal under the 1994 ban was swapping internal parts like the foreign-trigger group for domestic ones. n309 And for some people just the color and constituent materials of the gun (black and synthetic versus [\*1326] wood and blued steel) may be the difference between sporting and menacing. n310 More broadly, in the context of the full inventory of common firearms, the moral distinction is unsustainable. Is it plausible that guns easily secreted on the person (i.e., handguns, all of which have pistol grips) are morally superior to rifles with pistol grips? Are high-powered rifles that can produce sure kills on human targets at hundreds of yards (essentially every deer rifle ever made) morally superior to lower-powered carbines with adjustable stocks (e.g., the AR-15)? Why are semiautomatic repeaters in intermediate calibers reprehensible but high-caliber semiautomatic, pump-, or lever-action hunting guns, and multi-projectile shotguns morally benign?

My emotional student's revulsion against the assault weapon is a tenuous platform for building policy. But if assault weapons bans are to be sustained, it is something like that revulsion that must be elevated to a countervailing state interest. Compared to the state interest in the partial-birth abortion case - restricting a procedure that borders on infanticide - it seems quite trivial.

#### ii. Private Judgments and Public Morality

Justice Kennedy contends that the judgment of the doctor about the necessity of D&X to preserve life or health of the mother puts a public judgment into private hands - that "it is now Dr. Leroy Carhart who sets abortion policy for the State of Nebraska, not the legislature or the people." n311 On a question steeped in "morality," Justice Kennedy says it is wrong to make this an individual subjective decision. n312

Contrast the assault weapons case where the mere assertion by the right-bearer that a particular technology is better for him (the equivalent of Justice Kennedy's complaint about Dr. Carhart) is only secondary evidence of SMU. For assault weapons, the primary claim of SMU is objective, based on distinctions in ballistics, recoil, and rate of fire that are mechanical, repeatable, and precisely measurable.

#### iii. Rights on the Border of Legitimacy and the State Interest at Its Peak

Justice Kennedy emphasizes that the disputed D&X procedure is effective only when the fetus is nearly or actually viable, a point where the state's interest in fetal life is nearing its peak and the woman's claim is weakest. n313 He emphasizes Dr. Carhart's admission that he performs [\*1327] D&X abortions even "when he is unsure whether the fetus is viable" n314 and argues that dispatching the viable fetus through the prohibited D&X procedure borders on infanticide because the abortion proceeds essentially as a live birth until the fetus is destroyed. n315 He argues essentially that D&X is categorically different from other abortion procedures.

The assault weapons question avoids this criticism. There is no comparable argument that the assault weapon user is any different from someone who has used a handgun or other unquestionably constitutionally-protected gun in self-defense. It is the circumstances, not the gun type, that determine whether the self-defense claim is legitimate. On this measure, the assault weapons claim is stronger. D&X, and arguably even the less controversial D&E procedure, produces a qualitatively distinct type of destruction because the fetus has grown to look more human, is perhaps viable outside the womb, and is destroyed in a fashion where analogies like drawing and quartering seem fair.

A different argument is that the assault weapon in criminal hands generates externalities qualitatively different from other guns in the civilian inventory. The utility discussion above shows that while every type of gun has its SMUs, the utility that imposes the highest externalities is the concealability of handguns. n316 Moreover, most assault weapons are less lethal than deer rifles, and their multishot capability is exceeded by the ubiquitous shotgun. n317 The complaint about their appearance reflects an uneasiness about making self-defense against fellow citizens a central component of public policy. But now that Heller has done just that, the objection to "nonsporting," overtly self-defensive guns is unsustainable.

#### iv. Incorporating Substantial Countervailing Interests

Justice Kennedy argues that Stenberg violates Casey by establishing a right to partial-birth abortion without any interference from the state. n318 People will debate this construction, but it highlights an important point. Casey acknowledged the substantial state interest in potential life throughout pregnancy, declaring that "not all regulations must be deemed unwarranted." n319

This prompts an instructive comparison with Heller, which broadly affirms the state's interest in regulating firearms externalities. Heller says [\*1328] that most existing gun-control regulations remain valid, that laws restricting access by felons and minors are not suspect, and that functionally distinct guns like machine guns might not be protected. n320 That the Court has limited Second Amendment protection to guns in common use for lawful purposes like self-defense by definition denies citizens access to substantially all of the military arsenal. n321 In this sense Heller already endorses a broader range of government regulation than Stenberg would tolerate in the abortion context. Under the logic of Stenberg, essentially every type of abortion procedure is guaranteed if deemed necessary to save the mother's life. n322 Heller, on the other hand, declares that only a narrow range of common firearms are guaranteed under the Second Amendment, and that many people by their behavior or their status can be denied even those. n323

#### v. De Minimis Special Marginal Utilities

Justice Kennedy contends that the majority is "wrong to limit its inquiry to the relative physical safety of the two procedures, with the slightest potential difference requiring the invalidation of the law." n324 The majority is straightforward about this. Alternatives to the D&X procedure were found by the district court actually to be safe and adequate, respecting at a reasonable level the woman's interest in having a safe procedure. n325 However, the prevailing argument was that the prohibited procedure was safer than other safe ones. n326 Women are entitled to the better methodology, even where that means destruction of the entirely innocent postviability fetus through a very problematic methodology. n327

The argument that the special utilities of assault weapons can be adequately replaced by other constitutionally protected firearms is essentially the same. Stenberg principles dictate that the state may not ban assault weapons on the argument that alternate firearms exist, so long as the assault weapon provides an advantage. On this point as well, the assault weapons claim is comparatively stronger. There is substantial dispute about the special utility of the D&X procedure, with competing views plagued by subjective judgments. n328 The assault weapons case, in contrast, turns on verifiable physical characteristics already discussed.

#### [\*1329]

#### vi. Letting the State Take Sides in Utility Disputes

Justice Kennedy criticizes the majority for ignoring precedent that in other contexts permitted states to take sides on disputed medical questions. n329 In the assault weapons case, this principle would demand a detailed evaluation and deference to the state where there is fair disagreement about assault weapons' externalities. The showing would focus on the objective evidence of functionality. Faked photo-ops and wild assertions about super-destructive assault weapon bullets would diminish the state's position. n330 And here, the interesting question is whether Justice Kennedy would

defer to credible state findings that assault weapons impose important net externalities. Unwillingness to defer would expose him to the attitudinalist critique.

b. Thomas in Dissent

i. Highlighting the Partial-Birth Abortion/Assault Weapon Intersection

Justice Thomas argues that the Stenberg majority goes beyond what is required to protect the mother's health. n331 He contends that the majority fails "to distinguish between cases in which health concerns require a woman to obtain an abortion and cases in which health concerns cause a woman who desires an abortion (for whatever reason) to prefer one method over another." n332

This highlights the space where the abortion and gun claims intersect and is another illustration of their relative strength. The Stenberg abortion right is strongest - near absolute - where necessary to preserve the life or health of the mother. The mother is never required to surrender her life to the state's interest in the life of the fetus. n333 This is pure abortion as self-defense claim in the style of Judith Thomson and Donald Regan. n334 But this self-defense analogy only covers the small fraction of abortion claims where the mother's life is at stake. In contrast, essentially every gun claim to the better methodology for self-defense invokes the principle (controlling in Stenberg) that the state cannot trump the right-bearer's interest in preserving her own life. So over a far broader range of cases, the gun claim is covered by the strongest rendition of Stenberg's protection of methodological alternatives. n335

[\* 1330]

ii. Tolerating Infringements at the Margin

Justice Thomas's criticism that the majority has overridden important state interests to protect a marginal, even reprehensible, abortion methodology highlights another important distinction that makes assault weapons a stronger case under Stenberg principles than partial-birth abortion. n336 His first point is that this is not like *Planned Parenthood of Central Missouri v. Danforth*, which outlawed a procedure used in 70% of abortions after twelve weeks. n337 His view of the Court's abortion decisions is that banning a widely used methodology is problematic, but infringements at the margin can be tolerated. n338

The gun parallel is evident. Under Justice Thomas's view, it would be problematic to ban handguns because they are so widely used for self-defense. n339 The assault weapon, in contrast, is like the more rarely used abortion methodologies. In principle, then, Justice Thomas's willingness to tolerate infringements at the margin - on the view that the core right is intact - should predict his response to an assault weapons ban. Is he trapped by inconsistency if he votes to strike down an assault weapons ban and rejects the argument that adequate alternative guns are available?

The answer is in the details of his Stenberg dissent. Thomas invokes *Danforth* to press the point that D&X is not only rarely used (it is only considered in 5.5% of abortions that occur after fifteen weeks, the vast majority of which are performed using the D&E alternative), n340 but that "[a] select committee of [the American College of Obstetricians and Gynecologists] 'could identify no circumstances under which this procedure ... would be the only option.'" n341 So, unlike the majority, Justice Thomas concludes from the empirical debate that there is "no basis upon which to state the claim that [partial-birth abortion] is a safer or even a preferred procedure." n342 In his view, the SMUs of D&X is zero, and its externalities (flirting with infanticide) are off the scale. n343 In [\*1331] contrast, the assault weapon claim presents strong objective evidence of SMU. His answer, then, to the attitudinalist critique would be that there is a broad empirical disanalogy favoring the assault weapons claim and disfavoring partial-birth abortion. Even though they reside in similarly contested space, on this point the greater SMUs of the assault weapon makes the two claims very different cases. n344

3. *Gonzales v. Carhart*: Reflecting Back the Standard Position?

In 2007, Court conservatives upheld a federal partial-birth abortion ban that distinguished and diminished Stenberg. n345 In *Gonzales v. Carhart*, the Court credited congressional findings that "intact D&E" (i.e., D&X) is never the better methodology for preserving the life or health of the mother. n346 *Gonzales* exposes the conservative wing of the Court to the attitudinalist critique. It reflects one leg of what I will call the "common view" of conservatives (i.e., support for gun rights and disparagement of abortion rights). While *Heller* nominally reflects the other leg, the better and more instructive test of the attitudinalist proposition would be an assault weapons case invoking the Stenberg principles that



conservatives opposed. n347 However, that case still would not be as open and telling a test of conservative attitudinalism as Stenberg is for Court liberals.

The reason is in the distinction that has been evident throughout this critique. Gonzales underscores the conclusion that the common view faces a far lighter burden of principle than the standard position. This is a function of the factual distinctions between the partial-birth abortion and assault weapons claims. Those distinctions are illustrated broadly by my original assessment in Principles and Passions, n348 and more particularly here. The discussion below will elaborate the relative burdens of the standard position and the common view by emphasizing elements of the assault weapons claim that make the common view easier to sustain as a matter of principle. n349

[\*1332]

a. Partial-Birth Abortion as a Transformative Methodology

Writing for the majority, Justice Kennedy suggests partial-birth abortion is an appropriate object of legislative attention because it is a qualitatively different, indeed transformative, methodology. n350 The D&X procedure is distinct even from D&E because the relative similarity of D&X to the actual birth process transforms it from a legitimate abortion procedure into something just short of assault on a human child.

Nothing about the assault weapon, or using assault weapons for self-defense, is similarly transformative. The assault weapon is a gun, like other guns. It is deadly, like other guns. But it is demonstrably not the most dangerous gun in the inventory of common firearms. n351 It does not impact targets in a different, somehow more reprehensible way. Legitimate acts of self-defense are not rendered illegitimate because the defender uses an AR-15 instead of a handgun. So unlike partial-birth abortion, on this test of legitimacy, the assault weapon survives.

b. Disputed Utility and Legislative Discretion

Integral to the outcome in Gonzales is the majority's willingness to credit the legislature's judgment that there is overriding evidence of disutility: the contested statute was grounded on a congressional finding that partial-birth abortion is never the best methodology for preservation of the life or health of the mother. n352 Justice Kennedy dissented in Stenberg that legislatures should be permitted to take sides in this fashion. n353 Gonzales enforces that view. Acknowledging the dispute about the utility of D&X, the majority finds the case close enough to defer to Congress: n354

There is documented medical disagreement whether the Act's prohibition would ever impose significant health risks on women... .

The question becomes whether the Act can stand when this medical uncertainty persists. The Court's precedents instruct that the Act can survive this facial attack. The Court has given state and federal [\*1333] legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty... .

... .

Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts... .

The conclusion that the Act does not impose an undue burden is supported by other considerations. Alternatives [for example, D&E] are available to the prohibited procedure... .

...  
 ... Considerations of marginal safety, including the balance of risks, are within the legislative competence when the regulation is rational and in pursuit of legitimate ends. n355

The Court does not entirely credit the congressional assessment. n356 But it does find the state interest sufficient to trump the essentially de minimis assertions of partial-birth abortion special utility. n357 This explicitly undercuts Stenberg and, more importantly for our purposes, exposes the Gonzales majority n358 to the attitudinalist critique. So would the Gonzales majority defer to legislative findings that assault weapons have no SMUs or are never the better self-defense option? If not, would they simply be indulging the common view of the right? Or can such a decision be justified as a matter of principle? This dilemma is structurally parallel to that afflicting Court liberals, but quantitatively it is quite different.

First, the deference in Gonzales is in the context of doctors' subjective preferences for competing medical procedures. n359 In contrast, the assault weapons question is more plainly a matter of measurable physical differences. In terms of functional utility, there is far less room to establish a parallel empirical disagreement about the assault weapon. For example, the core measurable utility of intermediate ballistics is indisputable. n360

Still, the emphasis on the wide discretion the Court has permitted legislatures on questions of disputed medical utility n361 poses for the Gonzales majority a threshold burden of principle in the assessment of subsequent assault weapons bans. Justices who in Gonzales endorsed [\*1334] deference to the legislature on disputed medical questions must take pains to show that the assault weapons claim is not exposed to the same type of subjective empirical dispute - that assault weapon SMUs are objectively measurable and that distinct assault weapons features will operate both as SMUs or externalities purely depending on the user. n362 These distinctions are more than plausible but present a difference of degree, not substance. Committed attitudinalists still might say it is all just a smokescreen for conservatives advancing the common view.

#### c. Dominant Methodologies and Methodological Alternatives

Like Stenberg, Gonzales affirms that a broad ban on dominant methodologies for exercising the protected right would be unconstitutional. n363 But unlike Stenberg, Gonzales permits limitations on rarely-used methodologies where good alternatives are available. n364 Extending that principle to the gun case, a sweeping handgun ban should be treated the same as a sweeping early-term-abortion ban. Both statutes should be struck down because they prohibit the dominant methodology for exercising the protected right. The assault weapon, however, is like the D&X procedure under Gonzales - a less common methodology that has substitutes - with an important difference. For some people, the light recoil from the intermediate cartridge makes the assault weapon always the best self-defense tool. n365 This showing would remove the "available alternatives" element that justified the infringement on marginal [\*1335] methodologies in Gonzales. n366 It also would provide cover to the conservative wing of the Court in a subsequent assault weapons case that had to explain why infringement on marginal methodologies was acceptable in the abortion context (Gonzales) but not in the gun case. As legal distinctions go, it seems fair. Whether it would satisfy the committed attitudinalist is a tougher question.

#### d. Rejecting Physicians' Subjective Valuations

Justice Kennedy dissented in Stenberg that the majority turned individual doctors into arbiters of community morality. n367 Gonzales gives that objection constitutional effect: "The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community." n368 Furthermore, "when standard medical options are available, mere convenience does not suffice to displace them; and if some procedures have different risks than others, it does not follow that the State is altogether barred from imposing reasonable regulations." n369 So the preferences of individual doctors will not be dispositive on the question of methodological utility.

The assault weapons comparison yields two separate points. Throughout the discussion of Stenberg, I have emphasized that assertions of partial-birth abortion utility were primarily subjective (grounded in the surgical preferences of particular doctors) while the primary SMUs of the assault weapon were objectively measurable. n370 However, as discussed above, the assault weapon presents a variety of "subjective" SMUs as well. n371 Conceivably,

one or more of those factors might be central to a particular aspect of a future assault weapons dispute. In a case like that, Justice Kennedy's treatment of subjective SMU claims would invite an attitudinalist challenge.

e. Disputed Utility and Facial Attacks

Justice Kennedy explains that the questionable utility of partial-birth abortion, supplemented by the congressional finding that it is never the best alternative, makes the statute particularly unsuited to facial attack. n372 The problem is better suited to an as-applied challenge:

The Act is not invalid on its face where there is uncertainty over whether the barred procedure is ever necessary to preserve a woman's health, given the availability of other abortion procedures that are considered to be safe alternatives.

[\*1336]

The considerations we have discussed support our further determination that these facial attacks should not have been entertained in the first instance. In these circumstances the proper means to consider exceptions is by as-applied challenge. n373

This view imposes a substantial burden of principle on Court conservatives. It is not at all clear that the quantitative differences between the partial-birth abortion and assault weapons claims dictate a different outcome on the facial challenge question. So a subsequent facial attack on assault weapons legislation would be telling. Justice Kennedy's suggestion that an as-applied challenge gives the Court a better opportunity to quantify and balance utility and risk is easily applicable to the assault weapons question. But broadly speaking this is always the case. So there still is room to answer that the facial challenge comparison really is not close, as shown by comparing the respective claims of special utility. n374

Evaluation of assault weapons under the abortion standard for facial challenges is complicated by the Court's failure to articulate a precise standard. The Gonzales majority explains, "What [the facial challenge] burden consists of in the specific context of abortion statutes has been a subject of some question. We need not resolve that debate." n375 Justice Kennedy acknowledges two possible views: that a facial challenge to an abortion statute "must show that no set of circumstances exists under which the Act would be valid," n376 or that the legislation would be "unconstitutional in a large fraction of relevant cases." n377

So a facial challenge in the equivalent assault weapons case might require a showing that no set of circumstances exists under which the ban would be valid. This is an extremely demanding standard that, taken literally, seems to credit almost any scenario the government can articulate. So even though assault weapons claimants might make powerful arguments that a facial challenge to an assault weapons ban is a far stronger case, a facial challenge sustained by conservatives still would [\*1337] invite the strong attitudinalist challenge of unprincipled capitulation to the conservative common view.

On the second, weaker standard, Justice Kennedy argues in *Gonzales* that respondents failed to demonstrate that the ban would be unconstitutional in a large fraction of relevant cases. n378 On that measure the assault weapons claim is dramatically stronger, and this underscores a distinction I have made throughout. The strongest arguments in favor of abortion (i.e., abortion as self-defense) n379 only cover a very narrow slice of all abortions (because most pregnancies do not threaten the life of the mother). n380 In contrast, nearly every assault weapons claim can fairly assert the right-bearer's entitlement to the SMUs necessary to defend life against wrongful aggressors. Here, the assault weapons claim is sufficiently distinct and compelling that the Court might consider the assault weapons question facially, without the criticism of unprincipled capitulation to the common view.

Conclusion

One can on a principled basis elevate the state's interest above the individual's interest on questions of self-defense and abortion. One can on a principled basis subordinate the state's interest in both. One can on a principled basis elevate the gun right but not the abortion right (because the competing life-interest in the abortion context is entirely innocent and in only a fraction of cases is the mother's life at stake, while the right-bearer's life is always at stake in the self-defense case). But a principled argument has yet to be made for elevating the abortion right but subordinating the gun right.

Attitudinalists tell us it is folly to expect adherence to principle on such matters. If and when an assault weapons case reaches the Supreme Court, it will be an important test of whether the attitudinalists are correct.

#### Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & Procedure Criminal Offenses Homicide Criminal Abortion Penalties Criminal Law & Procedure Criminal Offenses Weapons General Overview Criminal Law & Procedure Defenses Self-Defense

#### FOOTNOTES:

n1. See Nicholas J. Johnson, *Imagining Gun Control in America: Understanding the Remainder Problem*, 43 *Wake Forest L. Rev.* 837, 843 n.21 (2008) (citing Graduate Inst. of Int'l Studies, *Small Arms Survey 2007: Guns and the City* 47 tbl.2.3 (2007) [hereinafter *Small Arms Survey*]).

n2. 128 S. Ct. 2783, 2791-92 (2008).

n3. See Johnson, *supra* note 1, at 838-39.

n4. See *id.*

n5. Indications that the Obama administration favors renewal of the 1994 ban, 18 U.S.C. § 922 (2006), have fueled a buying panic that has pushed assault weapon sales to record levels. Alex Roth & Betsy McKay, *Fear and Greed Have Sales of Guns and Ammo Shooting Up*, Wall St. J., Apr. 16, 2009, at A1, available at <http://online.wsj.com/article/SB123984046627223159.html>; The "Obama Effect" Brings a Run on Guns and Ammo, *Time*, Apr. 27, 2009, at 27.

n6. 128 S. Ct. at 2817-18.

n7. See *id.* at 2817.

n8. *Id.* at 2816-17; *id.* at 2846 (Breyer, J., dissenting).

n9. See, e.g., *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65 (1981).

n10. See *id.* ("Motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee.").

n11. See *Heller*, 128 S. Ct. at 2817. Some will criticize this distinction as more practical and political than constitutional. Ideally, we might all agree that constitutional rights must be equally protected, and rhetorically the Court has affirmed this idea. See, e.g., *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 484 (1982) ("We know of no principled basis on which to create a hierarchy of constitutional values ...").

n12. Nicholas J. Johnson, *Principles and Passions: The Intersection of Abortion and Gun Rights*, 50 *Rutgers L. Rev.* 97, 98-99 (1997). Core arguments from that article are summarized in the text of this Article. See *infra* notes 196-221 and accompanying text.

n13. Johnson, *supra* note 12, at 99.

n14. 530 U.S. 914, 920-23 (2000).

n15. *Id.* at 921-22.

n16. See *id.* at 929-30. The Nebraska statute contrasted the illegal D&X procedure with the legal D&E procedure. *Id.* at 923-29. Subsequently, in *Gonzales v. Carhart*, 127 S. Ct. 1610, 1621 (2007), the term "intact D&E" was used synonymously with D&X.

n17. *Stenberg*, 530 U.S. at 937-38.

n18. *Gonzales*, 127 S. Ct. at 1619.

n19. See *id.*

n20. *Id.* at 1638 (emphasis added). While the Court did not entirely defer to those findings, its standards for evaluating those findings make *Gonzales* a more complicated comparison than *Stenberg*. See *id.* at 1638-39.

n21. *Stenberg*, 530 U.S. at 937-38.

n22. See, e.g., Theodore W. Ruger et al., The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking, 104 *Colum. L. Rev.* 1150, 1152-55 (2004). Michael Dorf summarizes and brings a degree of skepticism to the attitudinalist model:

Political scientists who study the Supreme Court do not take legal doctrine very seriously. According to the leading view of the political scientists - the "attitudinal model" - the attitudes of individual Justices are a better predictor of how the Court will resolve contested cases than is the sort of reasoning one finds in briefs and opinions...

...

... The political scientist employs Occam's razor to dispense with the metaphysical nonsense of law as a category independent of values, ideology and preferences, at least in the sorts of hard cases that reach the Supreme Court. Most spectacularly, she can point to the results of a recent experiment - the "Supreme Court Forecasting Project" - in which a cousin of the attitudinal model was matched against a battery of legal experts, each of whom was asked to predict the outcomes of then-pending cases in their respective fields of expertise: The statistical model correctly predicted the outcome in seventy-five percent of the cases, while the human team was right in only fifty-nine percent. Thus, armed with her statistics and regression analyses, the political scientist can dismiss most talk of "law" as worse than useless.

Michael C. Dorf, Whose Ox is Being Gored? When Attitudinalism Meets Federalism, 21 *St. John's J. Legal Comment.* 497, 498-500 (2007) (footnotes omitted).

n23. Ruger et al., *supra* note 22, at 1154.

n24. Dorf, *supra* note 22, at 500.

n25. I use "passions" here roughly in the sense that James Madison employed to describe the political interests and connections that generate factions: "By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens." *The Federalist* No. 10, at 130 (James Madison) (E. H. Scott ed., 1898) (emphasis added).

n26. Dorf, *supra* note 22, at 499-500. This criticism was at the core of my first elaboration of the "standard position" more than a decade ago. See Johnson, *supra* note 12, at 99-100.

n27. See Dorf, *supra* note 22, at 512-13.

n28. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2863-64 (2008) (Breyer, J., dissenting).

n29. For example, every year in my Gun Control seminar, I conduct a survey on the first day of class. I have always gotten at least one response reflecting the belief that assault weapons are machine guns.

n30. Violence Policy Ctr., *Assault Weapons and Accessories in America* (1988), available at [www.vpc.org/studies/awacont.htm](http://www.vpc.org/studies/awacont.htm) (follow "Conclusion" hyperlink).

n31. *Id.*

n32. *Id.*

n33. See Bruce H. Kobayashi & Joseph E. Olson, In Re 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of "Assault Weapons," *Stan. L. & Pol'y Rev.*, Winter 1997, at 41, 43.

n34. Violence Policy Ctr., *supra* note 30.

n35. *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting).

n36. *Id.* (quoting Kobayashi & Olson, *supra* note 33, at 43).

n37. Steven P. Halbrook, *Firearms Law Deskbook: Federal and State Criminal Practice* 671 (2008-2009 ed.) (alteration in original) (footnote omitted) (quoting Harold E. Johnson, U.S. Army Foreign Sci. & Tech. Ctr., *Small Arms Identification and Operations Guide - Eurasian Communist Countries* 105 (1980)).

n38. See, e.g., David B. Kopel, Rational Basis Analysis of "Assault Weapon" Prohibition, 20 *J. Contemp. L.* 381, 386-87 (1994).

n39. This means they fire one shot with each pull of the trigger. See Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/semiautomatic> (last visited June 10, 2009) ("Able to fire repeatedly but requiring release and another pressure of the trigger for each successive shot.").

n40. David Kopel provides a detailed description, along with photographs, of the types of guns defined as assault weapons under the 1994 ban. See David B. Kopel, "Assault Weapons," in *Guns: Who Should Have them?* 159, 159-74, 192-203 (David B. Kopel ed., 1995).

n41. See Jacob Sullum, *Ban Aid: The Real Point of the "Assault Weapon" Law*, Reason Online, May 9, 2003, <http://www.reason.com/news/show/35711.html> ("In 1996 Washington Post columnist Charles Krauthammer, who favors banning gun possession by civilians, conceded that the arguments advanced by supporters of the 'assault weapon' ban were 'laughable.' The 'only real justification' for the law, he said, 'is not to reduce crime but to desensitize the public to the regulation of weapons in preparation for their ultimate confiscation.'").

n42. Johnson, *supra* note 1, at 842. It is undeniable that a sealed room with no guns in it will have no gun crime. That simple idea, extrapolated to society at large, is the impulse for the view that supply restrictions are the answer to gun crime in America. *Id.* at 844.

n43. See *id.* at 839.

n44. *Id.* at 853 (citing Small Arms Survey, *supra* note 1, at 55).

n45. *Id.*

n46. See *id.* at 853-56.

n47. *Id.* at 855-56.

n48. *Id.* at 848 n.44 (citing Comm. to Improve Research Info. & Data on Firearms, Nat'l Research Council, *Firearms and Violence: A Critical Review* 73 (Charles F. Wellford et al. eds., 2004)).

n49. See, e.g., Sullum, *supra* note 41. Furthermore, guns used in crime are, by a wide margin, handguns. See Bureau of Justice Statistics, U.S. Dep't of Justice, *Homicide Trends in the United States*, available at <http://www.ojp.usdoj.gov/bjs/homicide/tables/weaponstab.htm>; see also *District of Columbia v. Heller*, 128 S. Ct. 2783, 2856-57 (2008) (Breyer, J., dissenting) (citing statistics suggesting that handguns "appear to be a very popular weapon among criminals"). Handguns are explicitly constitutionally protected under *Heller*. See *id.* at 2821-22 (majority opinion).

n50. The push for renewal of the 1994 ban by the Obama administration has been resisted by the Senate and House leadership. See J. Taylor Rushing, *Reid Joins Pelosi in Opposing Ban Revival*, TheHill.com, Feb. 26, 2009, <http://thehill.com/leading-the-news/reid-joins-pelosi-in-opposing-weapons-ban-revival-2009-02-26.html>.

n51. Much of this criticism is captured by Justice Breyer's dissent. See *Heller*, 128 S. Ct. at 2869-70 (Breyer, J., dissenting).

n52. *Id.* at 2816-17 (majority opinion).

n53. 307 U.S. 174 (1939).

n54. *Heller*, 128 S. Ct. at 2815.

n55. *Id.* at 2815 (first, second, and third alterations in original) (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)).

n56. See *id.* at 2817 (referencing the "historical tradition of prohibiting the carrying of "dangerous and unusual weapons").

n57. See, e.g., Michael C. Dorf, Federal Court of Appeals Says the Second Amendment Places Limits on Gun Control Legislation, FindLaw.com, Oct. 31, 2001, <http://writ.news.findlaw.com/dorf/20011031.html>.

n58. *Heller*, 128 S. Ct. at 2817.

n59. In 1995 there were over 240,000 automatic weapons registered with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Marianne W. Zawitz, U.S. Dep't of Justice, *Guns Used in Crime* 4 (1995), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/guic.pdf>. About half are owned by civilians and the other half by police departments and other governmental agencies. Gary Kleck, *Targeting Guns: Firearms and Their Control* 108 (1997).

n60. See, e.g., Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (codified as amended in scattered sections of 18 and 26 U.S.C.).

n61. 18 U.S.C. § 922(o) (2006).

n62. *Heller*, 128 S. Ct. at 2822.

n63. A 1994 open letter critical of the Second Amendment published in several national periodicals is a perfect example. See Albert W. Alschuler et al., Does the 2nd Amendment Mean We Must Tolerate This?, *Am. Lawyer*, June 1994, at 96. The graphic backdrop of the letter is an INTRATEC "TEC-9." The TEC-9 is an ugly, menacing-looking gun. The letter suggests that by appearance alone, without any critique of relative functionality, thoughtful people should all agree that the TEC-9 is illegitimate. See *id.* But ironically, from a functional viewpoint, it is an absurdly sub-optimal gun. Though it is a handgun, it sacrifices the concealability that is the main SMU of the handgun. Though it is a semiautomatic, it fires not even the intermediate rifle round, but a pistol round that has less range and less inherent accuracy. GunsLot.com, Intratec TEC-9, <http://www.gunslot.com/guns/intratec-tec-9> (last visited June 10, 2009). It is generally unreliable, with feeding problems being the main difficulty. *Id.* Because it is extremely heavy for a handgun, it is difficult to fire accurately and difficult even to hold in firing position. *Id.* Demonstration of it compared to most other guns leaves observers wondering what rationale produced the distinction that labels the shotgun legitimate but stigmatizes the TEC-9. See *id.*

n64. Layne Simpson, Remington's Magnificent Five, *Shooting Times*, May 2000, available at <http://hunting.about.com/od/guns/1/aastremmag5a.htm>; Gary Engberg, America's Shotgun, *Buckmasters.com*, <http://www.buckmasters.com/bm/Resources/Articles/tabid/135/articleType/ArticleView/articleId/1151/Americas-Shotgun.aspx> (last visited June 10, 2009).

n65. The California Attorney General's chief firearms expert reflected this in his argument for either banning all semiautomatics or banning none of them. See Kopel, *supra* note 38, at 403; see also Nicholas J. Johnson, *Shots Across No Man's Land: A Response to Handgun Control, Inc.'s Richard Aborn*, 22 *Fordham Urb. L.J.* 441, 445 (1995) (explaining that criminals can switch from banned guns to acceptable guns that still



accept thirty-round-plus magazines and actually have deadlier higher-velocity rifle cartridges but simply lack pistol grips and bayonet lugs - aesthetic features targeted by weapons bans).

n66. See *infra* text accompanying note 78 (noting that 60% of gun owners have some sort of semiautomatic gun).

n67. See *infra* notes 68-72 and accompanying text. Many early semiautomatic firearms are now classified by the (ATF) as curios and relics. Special rules allow these guns to be sold and shipped directly between licensed collectors. See *18 U.S.C. §§921-931* (2006); *27 C.F.R. § 478.118* (2008) (regulations issued under *18 U.S.C. §§921-931*).

n68. Browning.com, Auto-5 Semi-Automatic Shotgun, <http://www.browning.com/customerservice/dategun/detail.asp?id=13> (last visited June 10, 2009).

n69. The Gun Digest: 1944 First Annual Edition 60 (Charles Richmond Jacobs et al. eds., 1944) [hereinafter *Gun Digest First Ed.*] ("The development of the automatic pistol between 1895 and 1911, and its adoption as the standard sidearm of most governments, have determined the general type of most of the pistol cartridges in present use.").

n70. Guns & Ammo, G&A Guide, Remington Model 8, [http://www.gunsandammomag.com/cs/Satellite/IMO\\_GA/Guide\\_C/Remington+Model+8](http://www.gunsandammomag.com/cs/Satellite/IMO_GA/Guide_C/Remington+Model+8) (last visited June 10, 2009). Remington bought the patent from designer John Browning, and marketed the gun beginning in 1906. Remington.com, Firearm Model History, Remington Model 8, [http://www.remington.com/library/history/firearm\\_models/centerfire/model\\_8.asp](http://www.remington.com/library/history/firearm_models/centerfire/model_8.asp) (last visited June 10, 2009). Semiautomatic rifles date to at least an 1885 design by Ferdinand Ritter von Mannlicher. See *Austro-Hungarian Army, Ferdinand Ritter von Mannlicher*, <http://www.austro-hungarian-army.co.uk/biog/mannlicher.htm> (last visited June 10, 2009) ("His first semi-automatic rifle design appeared in 1885 ...").

n71. See *supra* note 40 and accompanying text. Winchester produced the earliest automatic .22 put out in this country, the Model of 1903. Charles T. Haven, *Our Small Arms and Their Makers*, in *Gun Digest First Ed.*, *supra* note 69, at 7. Heavier automatics (read: semiautomatics) for hunting purposes were brought out in 1905 and 1907 and since, in typical deer hunting cartridges. *Id.* Automatic and repeating shotguns were also brought out before the First World War. *Id.* The Winchester 1907, like the typical assault weapon, accommodates a detachable box magazine. See Phil Davis, *Winchester 1907 Self Loader: 100 Year Old "Evil Assault Rifle,"* *GunNews*, June 2007, <http://sangamoncorifleassociation.org/phildavis/winchester1907selfloader.html>. It fires a 351 Winchester cartridge that at 180 grains is more than three times heavier than the typical 55 grain .223 round of the AR-15 from available fifteen-round magazines. *Id.*

n72. NRA Inst. for Legislative Action, *Semi-Automatic Firearms and the "Assault Weapon" Issue* (2005), <http://www.nra.org/Issues/factsheets/read.aspx?ID=238>. The National Rifle Association's Institute for Legislative Action calculates the number of semiautomatics as fifteen percent of the total privately-owned firearms inventory. *Id.*

n73. See generally David Hardy, *The Firearms Owners' Protection Act: A Historical and Legal Perspective*, *17 Cumb. L. Rev.* 585, 589-95 (1986) (describing federal regulatory and record-keeping requirements before the 1968 Gun Control Act).

n74. See Nicholas J. Johnson, *Testing the States' Rights Second Amendment for Content: A Showdown Between Federal Environmental Closure of Firing Ranges and Protective State Legislation*, *38 Ind. L. Rev.* 689, 715-16 (2005) (describing the Civilian Marksmanship Program "for selling surplus U.S. military arms and ammunition to civilians").

n75. See David Hemenway & Elizabeth Richardson, Characteristics of Automatic or Semiautomatic Firearm Ownership in the United States, 87 Am. J. Pub. Health 286, 287 (1997); NRA Inst. for Legislative Action, *supra* note 72.

n76. See, e.g., Hemenway & Richardson, *supra* note 75, at 286.

n77. *Id.* at 287.

n78. *Id.*

n79. See *infra* note 143 and accompanying text; see also Michael Bane, The World's Most Versatile Rifle, *Outdoor Life*, Aug. 2007, at 58-59 ("The AR has matured into one of the most versatile, accurate and easy-to-shoot platforms in the world.").

n80. Johnson, *supra* note 65.

n81. See, e.g., Sullum, *supra* note 41.

n82. See Brady Campaign to Prevent Gun Violence, The Top 10 NRA Myths About Assault Weapons, <http://www.bradycampaign.org/issues/assaultweapons/nramyths/> (last visited June 10, 2009). The Brady Center's commentary on assault weapons makes the argument that

The military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple targets very rapidly. For example, assault weapons are typically equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession.... Far from being simply "cosmetic," these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever.

...

... [These weapons] "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals."

...

The firepower of assault weapons makes them especially desired by violent criminals and especially lethal in their hands.

Id. (footnote omitted) (quoting Dep't of Treasury, Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles 38 (1998)).

n83. See *infra* Part II.A.2.

n84. See Chuck Karwan, America's Rifle: The AR-15 Has Weathered a 50 Year History of Controversy, Survived a Federal Ban and Fought in Everything from Steaming Jungles to Sandboxes. Now It's the Single Most Popular Centerfire Rifle in the U.S. Who Would've Guessed, *Combat Tactics, Guns & Ammo*, Feb. 2009, at 24; Jeff Knox, The Year of the AR and FUD, *Shotgun News*, Mar. 17, 2008, at 9 ("The AR-15 is the fastest selling firearm in the country and it appears that everyone in the industry is anxious to get in on the rush."). Citations to *Shotgun News* and similar publications may raise eyebrows. However, for industry news these are standard publications. Serious studies, like the congressionally-mandated evaluation of the impact of the 1994 ban, cite *Shotgun News* extensively on the point of sales and pricing. See Jeffrey A. Roth et al., *The Urban Inst., Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994* *passim* (1997).

n85. See, e.g., Judson Berger, Obama Driving Surge in Gun Sales, Firearms Groups Say, *FOXNews.com*, Jan. 16, 2009, <http://www.foxnews.com/politics/2009/01/16/firearms-associations-claim-obama-drove-surge-gun-sales/> ("End-of-the-year statistics show background checks for firearms purchases rose sharply in the last three months of 2008."); Nolan Findley, Obama is Stimulating Gun Sales, *Detroit News*, Feb. 8, 2009; Jacqui Seibel, Obama Election Triggers Run on Gun Sales in State, *Milwaukee J. Sentinel*, Nov. 14, 2008, available at <http://www.jsonline.com/news/wisconsin/34501994.html>.

n86. See Johnson, *supra* note 65, at 446-48.

n87. For a detailed discussion of comparative ballistics, see *infra* notes 142-71 and accompanying text. Long guns, with their longer barrels, stronger chambers (accommodating larger cartridges and thus larger powder charges), and design facilitating large-muscle-group support of the gun, are generally more effective at distances where the handgun is nearly irrelevant. Carbine vs. Shotgun vs. Pistol for Home Defense, *Monster Hunter Nation*, <http://larrycorreia.wordpress.com/2007/09/20/carbine-vs-shotgun-vs-pistol-for-home-defense/> (last visited June 10, 2009). The late Lieutenant Colonel Jeff Cooper, founder of Gunsite Training Center and vociferous advocate for major calibers in defensive handguns, famously said that for self-defense he would rather have a hatchet than a 9mm at intimate range. R.K. Campbell, *The Army Pistol* (Apr. 22, 2005), [http://www.gunblast.com/RKCampbell\\_ArmyPistol.htm](http://www.gunblast.com/RKCampbell_ArmyPistol.htm).

n88. See Kopel, *supra* note 38, at 404.

n89. See *id.* at 386.

n90. See *supra* note 49.

n91. *Armchairgunshow.com*, Winchester Lever Action Rifles, <http://www.armchairgunshow.com/WinLever-info.html> (last visited June 10, 2009); *FirearmsPrimer.com*, Rifle Cartridge Selection, [http://www.firearmsprimer.com/rifles/rifles\\_2.htm](http://www.firearmsprimer.com/rifles/rifles_2.htm) (last visited June 10, 2009). There is no distinct number for either velocity or energy, but generally rifle cartridges that fire a 150 grain projectile close to 3000 feet per second would be considered high power. Also "High Power" is the title of a very popular type of rifle competition. But to provide examples, a .30-06 Springfield or a .300 Winchester Magnum would be considered high power. The 7.62 x 39 (the cartridge most often used in the SS and AK-47 variants) and the 5.56 x 45 (very similar, but not identical, to the .223 Remington and used in most AR-15 type rifles) would be considered

intermediate cartridges. Publicola, Coming to Terms with Gun Control, [http://publicola.mu.nu/archives/2004/11/28/coming\\_to\\_terms\\_with\\_gun\\_control.html](http://publicola.mu.nu/archives/2004/11/28/coming_to_terms_with_gun_control.html) (last visited June 10, 2009).

n92. See *supra* note 59.

n93. See Kopel, *supra* note 40, at 164 ("The energy created by the explosion of gunpowder ... is used to reload the next cartridge into the firing chamber.").

n94. See Gun Digest 2009: The World's Greatest Gun Book (Ken Ramage ed., 63rd ed. 2008) (illustrating guns of all types including lever actions, bolt actions, pump actions, revolver actions and semiautomatics firearms).

n95. See Kopel, *supra* note 40, at 164.

n96. Steve Lee, Magnum Marlin: My .44 Caliber Friend, [http://www.leverguns.com/articles/lee\\_marlin44.htm](http://www.leverguns.com/articles/lee_marlin44.htm) (last visited June 10, 2009). For aimed-fire at distance, the bolt action is generally superior in accuracy and ballistics. Chuck Hawks, The Bolt Action, [http://www.chuckhawks.com/bolt\\_action.htm](http://www.chuckhawks.com/bolt_action.htm) (last visited June 10, 2009). In the military context, the scoped bolt action rifle of the sniper is, by on one measure, far more deadly than repeating rifles like the M-16: "According to figures released by the Department of Defense, the average number of rounds expended in Vietnam to kill one enemy soldier [sic] with the M-16 was 50,000. The average number of rounds expended by U.S. military snipers to kill one enemy soldier was 1.3 rounds." Rod Powers, Army Sniper School: One Shot One Kill, <http://usmilitary.about.com/od/armytrng/a/sniperschool.htm> (last visited June 10, 2009).

n97. Kopel, *supra* note 40, at 164-65.

n98. *Id.* at 164-67. Some forms of rifle and pistol ammunition have attempted to copy this multi-projectile functionality. *Id.* Duplex loads in rifles and pistols (two projectiles in the same case) double the round count of each trigger pull. *Id.* The shotgun, in contrast, multiplies it many times depending on the size of shot used in the cartridge. *Id.* Semiautomatic shotguns also have been classified as assault weapons where they are fitted with pistol grips and folding stocks. *Id.*

n99. See Roth, *supra* note 84, at 1 ("Among other characteristics, ban proponents cited the capacity of these weapons, most of which had been originally designed for military use, to fire many bullets rapidly."). Supported by a grant from the National Institute of Justice, this study was mandated by the 1994 ban to assess its impacts. *Id.* at 8.

n100. See Kopel, *supra* note 40, at 165 ("Most semi-automatic firearms (both banned and nonbanned) store their ammunition in detachable boxes called "magazines.").

n101. See, e.g., Kopel, *supra* note 38, at 403 (describing how state assault weapons categories seemed to be constructed by legislators flipping through catalogues to identify menacing-looking guns).

n102. See *supra* note 71 (describing early Winchester semiautomatics).

n103. See Kopel, *supra* note 38, at 171-73.

n104. See Johnson, *supra* note 65, at 441-43.

n105. Halbrook, *supra* note 37, at 701 ("Ruger is subjected to its own quandary - the exempted Mini-14 is listed as 'w/o folding stock,' yet that rifle with a folding stock does not have a second feature which makes it otherwise prohibited under the generic definitions below.").

n106. The 1997 assault weapons study mandated by the 1994 Act concludes, "We were unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons ... ." Roth, *supra* note 84, at 2. The focus on accoutrements might be understood as rooted in the "sporting use" importation standard under the Gun Control Act of 1968, which is an interesting story of public and private motivations. See Nicholas J. Johnson, A Second Amendment Moment: The Constitutional Politics of Gun Control, 71 *Brook. L. Rev.* 715, 771-73 (2005) (describing the trade protectionism of the New England gun manufacturers as an impulse for the sporting-use filter in the 1968 Gun Control Act).

n107. See, e.g., Brady Campaign to Prevent Gun Violence, *supra* note 82 (claiming that guns with assault weapon features have only military application).

n108. The Brady organization urged that the only legitimate use of firearms was "sporting purposes." See Press Release, Brady Campaign to Prevent Gun Violence, Tiger Woods' "Gun-Toting Spectator" Confirms Weapons Problems at Sports Venues (Feb. 2, 1999), available at <http://www.bradiycampaign.org/media/release.php?release=158>.

n109. *Supra* note 101.

n110. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2717-22 (2008).

n111. Kopel argues that even pre-Heller, the assault weapons distinction could not pass a seriously administered rational-basis test. Kopel, *supra* note 38, at 417.

n112. See, e.g., *Cal. Penal Code* § 12275.5 (West 2008) ("The Legislature has restricted the assault weapons ... based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings.").

n113. Kopel, *supra* note 40, at 164-67.

n114. See, e.g., Brady Campaign to Prevent Gun Violence, Assault Weapons Threaten Our Safety And Security, <http://www.bradiycampaign.org/issues/assaultweapons/awoverview/> (last visited June 10, 2009) ("Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position."); Legal Community Against Violence, Banning Assault Weapons - A Legal Primer for State and Local Action 1 (reprint 2005), available at [http://www.lcav.org/library/reports\\_analyses/Banning\\_Assault\\_Weapons\\_A\\_Legal\\_Primer\\_8.05\\_entire.pdf](http://www.lcav.org/library/reports_analyses/Banning_Assault_Weapons_A_Legal_Primer_8.05_entire.pdf) ("Key assault weapon features include ... pistol grips ... facilitating spray firing from the hip."); Violence Policy Ctr., Bullet Hoses: Semiautomatic Assault Weapons - What Are They? What's So Bad About Them? (2003), available at <http://www.vpc.org/studies/hosecont.htm> (follow "Ten Key Points about What Assault Weapons Are and Why They Are So Deadly" hyperlink) ("'Spray-firing' from the hip, a widely recognized technique for the use of assault weapons in certain combat situations, has no place in civil society."). To justify the claim, the publication includes photographs of military personnel firing machine guns in this manner. *Id.* (follow "The Gun Industry's Lies" hyperlink).

n115. See Kopel, *supra* note 38, at 388 ("Although gun prohibition advocates sometimes use the catchphrase "spray-fire," a semiautomatic firearm, unlike a machine gun, cannot "spray fire," because the shooter must press the trigger for each shot.").

n116. W. W. Greener, *The Gun and Its Development* 351-73 (Cassell & Co., Ltd. 9th ed. 1910) (1881).

n117. See Kopel, *supra* note 40, at 164-67.

n118. Greener, *supra* note 116, at 434-68.

n119. *Id.*

n120. *Id.* at 351-52.

n121. See Philip B. Sharpe, *The Rifle in America* (Odysseus 1995) (1938).

n122. See *id.*

n123. See, e.g., O.F. Mossberg & Sons, Inc., Owners Manual for 500(R), 835(R) and 590(R) Model Pump Action Shotguns 6, available at [http://zugzwanged.org/dat/weapons/docs/man/mossberg\\_500.pdf](http://zugzwanged.org/dat/weapons/docs/man/mossberg_500.pdf). Many shotguns are semiautomatic, though typically these have been excluded from assault weapon designation. See Kopel, *supra* note 40, at 164-65. A greater number are pump action, which typically have also been excluded from assault weapon designation. *Id.* Guns of each type have been made with detachable magazines. See Saiga-12.com, IZHMAH Saiga-12 Shotguns, <http://www.saiga-12.com/> (last visited June 10, 2009). A few shotguns have been made using revolver technology. See Halbrook, *supra* note 37, at 538-39. In a curious exercise of logic, though understandable symbolically, the ATF reclassified one of these revolver style guns - the menacingly-named Streetsweeper - as a class III destructive device (the same regulatory category as machine guns). *Id.* The irony is that the gun does not exhibit the continuous reloading capacity that is the tactical virtue of the ordinary repeating shotgun. *Id.*

n124. See Mossberg, *supra* note 123.

n125. *Id.*

n126. *Id.*

n127. Shotguns do exhibit the ballistic disadvantage that the projectiles are round and fired from an unrifled barrel, are thus less aerodynamic than the spinning rifle projectile, and therefore lose velocity more quickly. See Greener, *supra* note 116, at 351-404. So, depending upon size, shotgun projectiles will have lost most of their energy within 100 to 200 yards. *Id.* However, within its range, the shotgun firing various loads inflicts far more destruction on soft targets than the typical assault weapon. *Id.*

n128. See, e.g., Bushmaster Firearms, Inc., Operating and Safety Instruction Manual for All Bushmaster XM15 Models 39 (2009), available at [http://www.ar15.com/content/manuals/manual\\_bushmaster.pdf](http://www.ar15.com/content/manuals/manual_bushmaster.pdf).

n129. See U.S. Army, Department of the Army Field Manual: Fm 23-5 (1965), available at <http://biggerhammer.net/manuals/garand/m1.htm>; see also Austro-Hungarian Army, *supra* note 70 (describing the Mannlicher's block clip feeding device).

n130. See U.S. Army, *supra* note 129.

n131. The Civilian Marksmanship Program website gives a detailed history of the military use of the M1 Garand and the current requirements for purchasing one through the Civilian Marksmanship Program. See Civilian Marksmanship Program Sales, Eligibility Requirements, <http://www.thecmp.org/eligibility.htm> (last visited June 10, 2009); Civilian Marksmanship Program Sales, M1 Garand Sales, <http://www.thecmp.org/m1garand.htm> (last visited June 10, 2009).

n132. See, e.g., Lee, *supra* note 96. For aimed fire there are nominal distinctions in speed. See *supra* note 40 and accompanying text.

n133. See, e.g., U.S. Repeating Arms Co., Inc., Winchester Rifles and Shotguns, Winchester Model 94 Lever Action Rifle Owner's Manual - Top-Tang Safety Version 17-18, available at [http://media.winchesterguns.com/pdf/om/02227\\_w\\_fa\\_94\\_om\\_s.pdf](http://media.winchesterguns.com/pdf/om/02227_w_fa_94_om_s.pdf).

n134. See, e.g., Sturm, Ruger & Co., Inc., Instruction Manual for Ruger(R) GP100(R) Double Action Revolver 14.

n135. *Supra* notes 89-90 and accompanying text.

n136. Roth, *supra* note 84, at 2.

n137. See Kopel, *supra* note 38, at 384-85.

n138. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2864 (2008) (Breyer, J., dissenting) (while seeming to believe it cuts the other way, Justice Breyer acknowledges the paradox: "The very attributes that make handguns particularly useful for self-defense are also what make them particularly dangerous.").

n139. *Stenberg v. Carhart*, 530 U.S. 914, 929-30 (2000).

n140. *Id.* at 938.

n141. See Kopel, *supra* note 40, at 168-69.

n142. Halbrook explains that the AR-15 designation is a misnomer, and that a more accurate label might be AR-15A2 Sporter II. Halbrook, *supra* note 37, at 700-01. However, the term "AR-15" is so commonly used that I will employ that designation.

n143. See Kopel, *supra* note 40, at 190-93.

n144. *Id.* at 168.

n145. *Id.* at 168-69.

n146. The cartridge is designated .30-06 because it is a .30 caliber adopted by the U.S. military in 1906 for the Springfield bolt-action infantry rifle. Craig Boddington, .30-06: Over 95 Years Old, It Remains America's Favorite Hunting Cartridge, *Petersen's Hunting*, [http://www.huntingmag.com/guns\\_loads/30\\_06\\_springfield/](http://www.huntingmag.com/guns_loads/30_06_springfield/) (last visited June 10, 2009). "The powerful .30-06 rifle cartridge developed by the United States Government during the year 1906 ... is one of the best military rifle cartridges in use in the world today... Accurate shooting can be done with it in a rifle at over 1,000 yards." Charles T. Haven, *Military Small Arms of World War II*, in *Gun Digest First Ed.*, supra note 69, at 55. It is perennially one of the most popular hunting cartridges in the United States. Charles Petty, *What's Really Selling?*, *Shooting Industry*, Feb. 2006, at 21.

n147. See *infra* notes 153-55 and accompanying text.

n148. Simpson, supra note 64 at 62, 63 ("[The 1950 series] was initially offered only in .30-06 ...").

n149. See Kopel, supra note 40, at 209.

n150. *Id.* at 204-09.

n151. The Internet Movie Firearms Database, *Saving Private Ryan*, [http://www.imfdb.org/index.php/Saving\\_Private\\_Ryan](http://www.imfdb.org/index.php/Saving_Private_Ryan) (last visited June 10, 2009). It is ironic that the Garand was exempted under the ban, see Dave Kopel, *Bait-'n'-Switch: Gun-prohibition lobbyists are after much more than AK-47s*, *Nat'l Rev.* Online, Sept. 13, 2004, <http://www.nationalreview.com/kopel/kopel200409130630.asp>, since it is not merely a military-style weapon, but rather the real thing. See The Patton Soc'y, *The M1 Garand Rifle*, <http://www.pattonhq.com/garand.html> (last visited June 10, 2009). It is an actual government-issued infantry rifle - a military weapon that General George S. Patton, Jr. called the "greatest battle implement ever devised." *Id.*

n152. The United States Civilian Marksmanship Program web site offers multiple illustrations and a detailed description of the Garand. See supra note 131; see also The Patton Soc'y, supra note 151.

n153. *Average Centerfire Rifle Cartridge Ballistics and Prices* [hereinafter *Ballistics and Prices*], in *Gun Digest 2007: The World's Greatest Gun Book* 229, 232 (Ken Ramage ed., 61st ed. 2006); see also Haven, supra note 69, at 55 ("The powerful .30-06 rifle cartridge developed by the United States Government during the year 1906 ... is one of the best military rifle cartridges in use in the world today... Accurate shooting can be done with it in a rifle at over 1,000 yards.").

n154. *Ballistics and Prices*, supra note 153.

n155. *Id.* at 229.

n156. *Id.*

n157. See Greener, supra note 116, at 566.

n158. The Remington Model 8 (first sold in 1906) chambered in .35 Remington fires a 200-grain bullet and produces 1921 foot-pounds of energy at the muzzle. *Ballistics and Prices*, supra note 153, at 233; Remington.com, supra note 70. Compare the 1282 foot-pounds of muzzle energy from the AR-15 firing the .223. See *Ballistics and Prices*, supra note 153, at 229.



n159. See *supra* note 153.

n160. *Ballistics and Prices*, *supra* note 153, at 231-33.

n161. *Id.* at 229.

n162. See *Kopel*, *supra* note 40, at 168-70.

n163. See, e.g., Conn. Dep't of Envtl. Prot., Connecticut Hunting and Trapping Guide 4, 9-13 (2009), available at [http://www.ct.gov/dep/lib/dep/hunting\\_trapping/pdf\\_files/fg2009.pdf](http://www.ct.gov/dep/lib/dep/hunting_trapping/pdf_files/fg2009.pdf) (requiring .243 minimum caliber for deer hunting: "Legal Firearms: 12, 16, or 20 gauge breech loading shotgun loaded with single soft alloy projectile ammunition. Rifled or smoothbore barrels allowed. Shotgun must not be capable of holding more than 3 shells. Centerfire rifle 6mm (.243 caliber) or larger, or muzzleloader (.45 caliber minimum).").

n164. *Kopel*, *supra* note 40, at 169 ("The great irony ... is that [assault weapons] are the only rifles that have ever been designed not to kill. The semi-automatic rifles use the same ammunition as battlefield weapons such as the M16, which deliberately use intermediate-power ammunition intended to wound rather than to kill. The theory is that wounding an enemy soldier uses up more of his side's resources (to haul him off the battlefield and then care for him) than does killing an enemy.").

n165. *Id.*

n166. See, e.g., ShotgunLife.com, *Women and Shotguns, Good Form and Shotgun Recoil*, <http://www.shotgunlife.com/Women-Shooters/women-and-shotguns.html> (last visited June 10, 2009) ("Semi-automatic shotguns - or autoloaders as they're also known - are prized for their low felt recoil compared with over/unders. A semi-automatic uses some of the expanding gases from the fired shell to cycle the next one into the chamber. So rather than you absorbing the full force of the shot, a semi-automatic puts that energy to good use.").

n167. See *id.* Expert gun fitters address part of the problem, but for people who cannot afford or do not even know about such services, "an ill-fitting shotgun heightens felt recoil. If you're unable to properly press the shotgun against your shoulder and face, the felt recoil could hurt like crazy." *Id.* at 2; see also Diane Campbell, *Shotgun Training Tips for Female and Smaller Officers*, PoliceOne.com, July 6, 2007, <http://www.policeone.com/police-products/firearms/shotguns/articles/1287382-Shotgun-training-tips-for-female-and-smaller-officers/> ("Let's face it. Many officers, particularly female and smaller officers, may be just plain afraid of shotguns. Whether real or imagined, the shotgun has a reputation for being painful. Often this reputation comes from poor training, too heavy a load or just incorrect handling. This really is a shame, since the shotgun is such a versatile use-of-force tool for law enforcement as well as home defense.").

n168. Chuck Hawks, *Remington Managed-Recoil Cartridges*, [http://www.chuckhawks.com/rem\\_managed\\_recoil.htm](http://www.chuckhawks.com/rem_managed_recoil.htm) (last visited June 10, 2009) [hereinafter *Hawks, Remington*] ("Although many will not admit it, most hunters find cartridges on the order of the .270, 7mm Magnum, .308, and .30-06 somewhat intimidating to shoot. And very few shooters are really comfortable shooting a .300 Magnum."); see also Chuck Hawks, *The Powerful .300 Magnums*, <http://www.chuckhawks.com/300magnum.htm> (last visited June 10, 2009) ("The .300 Magnums are generally regarded as suitable for game from the size of deer and antelope to the largest thin-skinned game worldwide... The main drawback to any of the .300 Magnums is recoil, which is more than most shooters can handle... Many professional guides in North America are suspicious of customers who show up with .300 Mag. rifles until they prove they can shoot their formidable rifles accurately.").

n169. See *supra* note 168.

n170. See *supra* note 153 and accompanying text.

n171. See, e.g., All Things Considered, Book Explores History of the American Rifle (NPR radio broadcast Dec. 21, 2008) (transcript available at <http://www.npr.org/templates/story/story.php?storyId=98578531>). The difference is illustrated anecdotally in this interview with Alexander Rose, author of *American Rifle: A Biography*. The interviewer, a young woman, fires an M1 Garand and then an AR-15. She comments unenthusiastically that the Garand is "heavy." *Id.* There is no on-air comment about the recoil but people who have fired the Garand can imagine that interesting things did not make it on air. The Garand hurts to shoot. Her comment about the AR-15 puts things in perspective. "It's a scary looking black thing," she says. *Id.* Then after firing it, "That was easy. It does not kick back at you." *Id.* This last comment was obviously in contrast to the heavy-recoiling Garand. This difference is the essence of controllability. As a self-defense gun, the Garand (and many more powerful, heavier hunting guns) by many estimates would be too much gun for a woman of average strength and build, and perhaps many others. See *id.* The AR-15 in contrast would not.

n172. See Hawks, Remington, *supra* note 168. While many sporting long guns also employ optics, those guns typically are heavier, longer, more powerful, and thus more punishing to practice with. *Id.* Shotguns similarly can be fitted with optics, but present similar disadvantages in terms of recoil, weight, and length. *Id.*

n173. See Hal W. Hendrick et al., *Human Factors Issues in Handgun Safety and Forensics* (2007).

n174. See *id.*

n175. See, e.g., Donald L. MacDaniel, Pistol Shooter's Rx for Tired Eyes, *Am. Rifleman*, May 1984, at 37; Robert B. Pomeranz, Aging Eyes and Iron Sights, *Am. Rifleman*, Sept. 1995, at 34.

n176. For example, a nineteen-year-old student of mine, who had aspirations to join the state police, found it impossible to complete the double action trigger pull on a Smith and Wesson Model 28 "Highway Patrolman" revolver double action. He was 5'9" and weighed 140 pounds. He was an athlete and a very good runner, but he did not have the hand strength to fire the gun without first cocking it into single action mode.

n177. Preference for the AR-15, for example, has been driven by popular firearms trainer Clint Smith's development of the "Urban Rifle" doctrine. Tiger McKee, Simplify for Success: The Basic AR Fighting Rifle, *Guns Mag.*, Combat Special Edition 2009, at 44, 46.

n178. See, e.g., Bane, *supra* note 79, at 58-61 ("The numbers are staggering. AR-platform guns are approaching handgun-level sales ... Ergonomics, coupled with ease of operation, light weight and the negligible recoil from the 5.56 cartridge, make AR-platform guns a blast to shoot. As an instructor, ... now I use an AR[] [for totally new shooters.] ... The more I've worked with the carbine, the more I've found myself 'defaulting' to the AR for a self-defense role."). Bane says the only reason he needs a handgun is to get to his rifle. *Id.* Over the past twenty years, I have taken scores of novices to the shooting range. Without exception, they find the low-powered semi-automatic rifle easier to shoot than the handgun.

n179. *Id.*

n180. *Id.* at 60.

n181. See Halbrook, *supra* note 37; Kopel, *supra* note 40, at 168-69.

n182. See *supra* Part II.B.1 for discussion of intermediate ballistics.

n183. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2815 ("The traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense.").

n184. See, e.g., Kopel, *supra* note 40, at 194-95 (describing situations where armed citizens helped restore public order after disasters).

n185. *Id.* at 163; see also AR15.com, Home of the Black Rifle, <http://www.ar15.com/> (last visited June 10, 2009). Some variations of the M16 fire three rounds per trigger pull. For a discussion of this "burst" capability, see Military Analysis Network, Fed'n of Am. Scientists, M16A2 5.56mm Semiautomatic Rifle, M4/M4A1, <http://www.fas.org/man/dod-101/sys/land/m16.htm> (last visited June 10, 2006).

n186. See Bushmaster, *supra* note 128.

n187. Johnson, *supra* note 1, at 861-63. Others have used the term "Katrina Rifle" to connote the same thing. See David Kenik, Katrina Rifle, in *Guns & Ammo: Book of the AR-15*, Feb. 2009, at 86.

n188. See, e.g., Robert Pear, Bush Policies Are Weakening National Guard, Governors Say, N.Y. Times, Feb. 27, 2006, available at <http://www.nytimes.com/2006/02/27/politics/27govs.html> ("Governors of both parties said Sunday that Bush administration policies were stripping the National Guard of equipment and personnel needed to respond to hurricanes, floods, tornadoes, forest fires and other emergencies.").

n189. Kopel, *supra* note 40, at 175.

n190. *Id.* at 168.

n191. See *supra* note 164 and accompanying text.

n192. See Gary Kleck & Marc Gertz, Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun, 86 *J. Crim. L. & Criminology* 150, tbl.3 at 185 (1995) (indicating that the vast majority of civilian defensive gun uses are brandishing scenarios where the gun is not fired).

n193. See FBI, U.S. Dep't of Justice, Law Enforcement Officers Killed and Assaulted 2004, at 6 (2005), available at <http://www.fbi.gov/ucr/killed/2004/downloads/LEO KA04.pdf> (indicating that confrontations with handguns occur at very close distances where few shots are fired and the person involved often misses).

n194. See *supra* notes 167-71 and accompanying text.

n195. See 128 S. Ct. 2783, 2717-22 (2008).

n196. See Johnson, *supra* note 12, at 115; see also Nicholas J. Johnson, Self-Defense?, 2 *J.L. Econ. & Pol'y* 187, 199 (2006).

n197. Johnson, *supra* note 12, at 99-100.

n198. See Dorf, *supra* note 22, at 498-99.

n199. Johnson, *supra* note 12, at 102-09 (critiquing Donald H. Regan, *Rewriting Roe v. Wade*, 77 *Mich. L. Rev.* 1569 (1979)).

n200. Regan, *supra* note 199, at 1611.

n201. *Id.* at 1611-13.

n202. *Id.* at 1613-16.

n203. See *Stenberg v. Carhart*, 530 U.S. 914, 1020 (2000) (Thomas, J., dissenting); Lilo T. Strauss et al., *Abortion Surveillance - United States, 2002*, MMWR Surveillance Summaries, Nov. 2005, at 6, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5407a1.htm>.

n204. Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 *N.C. L. Rev.* 375, 383 n.61 (1985) (citing Regan, *supra* note 199).

n205. Johnson, *supra* note 12, at 102-09.

n206. See *id.* at 110-15 (critiquing Judith Jarvis Thomson, *A Defense of Abortion*, 1 *Phil. & Pub. Aff.* 47 (1971)). Thomson's article preceded Regan's by nearly eight years. My colleagues in the social sciences who witnessed the impact of her essay suggest that all similar arguments are derivative of Thomson's. For example, Mane Hajdin, a Lecturer in Philosophy at Santa Clara University, expressed such a view to me in conversation. My ordering of the articles here reflects the position of Regan's article within the law review genre.

n207. Cass R. Sunstein, *Neutrality in Constitutional Law (with Special Reference to Pornography, Abortion, and Surrogacy)*, 92 *Colum. L. Rev.* 1, 31 n.120 (1992).

n208. Thomson, *supra* note 206, at 48-50.

n209. *Id.* at 52.

n210. *Id.*

n211. *Id.*

n212. The analogy is slim because only a fraction of abortion cases present a threat to the life of the mother. See *supra* note 203 and accompanying text.

n213. Johnson, *supra* note 12, at 110-15.

n214. Susan R. Estrich & Kathleen M. Sullivan, *Abortion Politics: Writing for an Audience of One*, 138 *U. Pa. L. Rev.* 119, 127 (1989).

n215. *Id.* at 122-23.

n216. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

n217. *Id.* at 847.

n218. *Id.* at 848 (emphasis added) (quoting *Poe v. Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting)).

n219. See, e.g., *Stenberg v. Carhart*, 530 U.S. 914, 983 (2000) (Thomas, J., dissenting) ("From reading the majority's sanitized description, one would think that this case involves state regulation of a widely accepted routine medical procedure. Nothing could be further from the truth. The most widely used method of abortion during this stage of pregnancy is so gruesome that its use can be traumatic even for the physicians and medical staff who perform it."); *supra* note 63.

n220. See, e.g., *supra* notes 72, 203 and accompanying text.

n221. See Johnson, *supra* note 12, at 170-74.

n222. 128 S. Ct. 2783, 2869 (2008) (Breyer, J., dissenting).

n223. 530 U.S. at 921-22.

n224. *Id.* at 937-38.

n225. *Id.* at 946-47 (Stevens, J., concurring).

n226. *Id.* at 938 (majority opinion).

n227. Justice Breyer, for example, seems stuck with his commitment in *Stenberg* to robust protection of even marginally better methods for exercising the contested right, where the life or health of the right-bearer is on the line. But his dissent in *Heller* emphatically rejects this same essential argument and advances instead the view that certain types of guns pose externalities (gun crime) that justify banning the entire category (handguns, seemingly regardless of their defensive utility), and not to worry because any individual right to arms is respected by allowing citizens to have some type of gun. See 128 S. Ct. at 2863-66 (Breyer, J., dissenting).

n228. 127 S. Ct. 1610, 1619 (2007).

n229. *Stenberg*, 530 U.S. at 958-59 (Kennedy, J., dissenting).

n230. 127 S. Ct. at 1638.

n231. 530 U.S. at 929-30.

n232. *Id.* at 933-37.

n233. *Id.* at 933-35.

n234. *Id.* at 946-47 (Stevens, J., concurring).

n235. *Id.* at 958-59 (Kennedy, J., dissenting) ("The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb... Dr. Carhart ... testified [that] he knows of a physician who removed the arm of a fetus only to have the fetus go on to be born "as a living child with one arm." (citation omitted) (quoting *Brief for Ass'n of American Physicians & Surgeons et al. as Amicus Curiae*, *Stenberg*, 530 U.S. 914 (No. 99-830))).

n236. *Id.* at 931-32 (majority opinion). Compare *District of Columbia v. Heller*, 128 S. Ct. 2783, 2860 (2008) (Breyer, J., dissenting) (concluding that dispute about the utility of the Washington, D.C. handgun ban required deference to the legislature "because legislators, not judges, have primary responsibility for drawing policy conclusions from empirical fact"), with *Stenberg*, 530 U.S. at 970 (Kennedy, J., dissenting) ("The Court fails to acknowledge substantial authority allowing the State to take sides in a medical debate, even when fundamental liberty interests are at stake and even when leading members of the profession disagree with the conclusions drawn by the legislature.").

n237. *Stenberg*, 530 U.S. at 930-31.

n238. *Id.*

n239. See discussion *supra* Part II.B.2.

n240. See *supra* notes 170-76 and accompanying text. As discussed above, in the category of long guns, the recoil and weight of the shotgun and many so-called "sporting rifles" exempted from the 1994 ban make them impractical for many smaller or weaker people. See *supra* notes 170-71 and accompanying text.

n241. 530 U.S. at 937-38.

n242. *Id.* at 932 ("The State fails to demonstrate that banning D&X without a health exception may not create significant health risks for women, because the record shows that significant medical authority supports the proposition that in some circumstances, D&X would be the safest procedure."). But see *District of Columbia v. Heller*, 128 S. Ct. 2387, 2852-53, 2860 (Breyer, J., dissenting) (urging deference to the legislature).

n243. *Stenberg*, 530 U.S. at 932 (quoting *Carhart v. Stenberg*, 11 F. Supp. 2d 1099, 1126 (D. Neb. 1998)).

n244. See *supra* Part II.B.

n245. See *supra* Part II.B.1.

n246. *Stenberg*, 530 U.S. at 964 (Kennedy, J., dissenting) (contending that by insisting on an exception to the ban where the individual doctor makes a judgment that partial-birth abortion is necessary, the majority "awards each physician a veto power over the State's judgment that the procedures should not be performed").

n247. See *supra* Part II.B.1.

n248. Zip Gun, UrbanDictionary.com, <http://www.urbandictionary.com/define.php?term=zip%20gun> (last visited June 10, 2009) (defining "zip gun" as "a crude weapon made usually in someones [sic] basement or garage").

n249. See Dave Kopel, Second Amendment Project, Warren Burger and the Second Amendment, <http://davekopel.org/2A/Mags/crburger.htm> (last visited June 10, 2009) ("So called 'Saturday Night Specials' are small, inexpensive, low-calibre handguns, disdained by most criminals ...").

n250. The second point may be difficult to show empirically. Also, some will object that this critique ignores the special utility of affordability - that it is not criminals but poor people who gravitate to these guns. Compare odd and idiosyncratic guns like those disguised as writing instruments, canes, or umbrellas that the ATF historically attempted to regulate more closely. See Halbrook, *supra* note 37, at 529.

n251. *530 U.S. at 933*.

n252. The Stenberg Court noted that there is "no reliable data on the number of D&X abortions performed annually. Estimates have ranged between 640 and 5,000 per year." *Id. at 929*.

n253. Strauss et al., *supra* note 203, at 1.

n254. *Id.*

n255. *Stenberg, 530 U.S. at 930*.

n256. *Id. at 934* ("Certain of the arguments are beside the point. The D&X procedure's relative rarity (argument (1)) is not highly relevant.").

n257. *Id.*

n258. *Id.*

n259. See *id.*

n260. See *id.* The comparative numbers for self-defense of course are contested. Compare Kleck & Gertz, *supra* note 192, at 164 (finding that up to 2.5 million Americans use guns defensively each year), with Philip J. Cook et al., The Gun Debate's New Mythical Number: How Many Defensive Uses Per Year?, 16 J. Pol'y Analysis & Mgmt. 463, 465 (1997) (estimating 1.5 million defensive gun users). In most defensive gun uses, the gun is not actually discharged. Kleck, *supra* note 59, at 162. This suggests that the appearance of the gun has substantial deterrent value. If this is right, the appearance of the assault weapon - its nonsporting features - should have higher deterrent value than others.

n261. See *Stenberg, 530 U.S. at 934*.

n262. See *supra* Part II.B.1.

n263. *530 U.S. at 934*.

n264. See *id. at 935*.

n265. *Id.* at 938.

n266. See *supra* text accompanying note 137.

n267. See *supra* text accompanying note 241.

n268. 530 U.S. at 935.

n269. *Id.* at 932.

n270. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2856-59 (2008) (Breyer, J., dissenting) (discussing extent of handgun violence); Christopher S. Koper et al., Univ. of Pa., An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, at 3 (2004), available at [http://www.sas.upenn.edu/jerrylee/research/aw\\_exec2\\_004.pdf](http://www.sas.upenn.edu/jerrylee/research/aw_exec2_004.pdf) (noting that assault weapons were used in only a small fraction (2-8%) of gun crimes before the 1995 ban).

n271. Ballistically it is difficult to sustain the argument that the assault weapon imposes more risk than a "sporting" long gun, say in the .300 Magnum category, or one of the "approved semiautomatics" from the last ban, like the M1 Garand. See *supra* Part II.A.2.

n272. 530 U.S. at 937-38.

n273. *Id.* at 936-37.

n274. *Id.* at 937 ("We cannot say that the presence of a different view by itself proves the contrary."). In the assault weapons context, there are analogies, but they cut against the state claim, either that assault weapons are a special enough threat that the state can impair the right in that limited case, or that assault weapons have no special utility in selected strands of self-defense.

n275. *Id.* (emphasis added). Justice Breyer offers this as if the abortion procedures do not really present a problem. He really is saying that stepping on the constitutional right is more of a problem, and the primary one, and that we will err in favor of the individual and protect the optimal methodology, even where the state and many citizens find the procedure gruesome, even criminal.

n276. *Id.*

n277. *Id.* at 934 (quoting Am. Coll. of Obstetricians & Gynecologists Executive Bd., Statement on Intact Dilation and Extraction (Jan. 12, 1997)).

n278. See generally Part II.B (explaining the regulatory paradox).

n279. This claim requires the difficult showing that a gun's features are not neutral - that somehow they are only accessible to criminals. The Brady Campaign to Prevent Gun Violence attempts this argument, suggesting that assault weapons have some special capacity for shooting from the hip - something criminals especially need to do. See Brady Campaign to Prevent Gun Violence, *supra* note 82. David Hemenway makes a similar effort in a survey that questions whether owners of semiautomatic firearms exhibit peculiar personality traits. See Hemenway & Richardson, *supra* note 76, at 286. He found that 60% of gun owners had at least one automatic or semiautomatic firearm, and that those people reported more frequent binge drinking. *Id.* at 287.



n280. See 530 U.S. at 937-38.

n281. *Id.* at 930.

n282. *Id.* at 938-39 ("We do not understand how one could distinguish, using [the statutory] language, between D&E ... and D&X ...").

n283. *Id.* at 946-47 (Stevens, J., concurring). Compare *id.* (describing as "irrational" the notion that the state furthers any legitimate interest by banning one abortion method but not the other), with *Gonzales v. Carhart*, 127 S. Ct. 1610, 1647 (2007) (Ginsburg, J., dissenting) ("The law saves not a single fetus from destruction, for it targets only a method of performing abortion."). These arguments parallel the broad claim that there is no distinction between the good guns and the bad guns in assault weapons legislation, and thus the distinctions based on appearance are irrational.

Justice Stevens also captures the essence of the armed self-defense decision in his summary of the personal right of the woman "to make this difficult and extremely personal decision." *Stenberg*, 530 U.S. at 946 (Stevens, J., concurring). The self-defense claim is stronger of course because the competing life interest is totally innocent in the abortion context and predominantly culpable in the self-defense context. Also, the gun case is stronger because it is death or severe bodily harm in the balance for the armed self-defender. In the abortion context, this is rarely the case. See *supra* notes 251-54 and accompanying text.

n284. Johnson, *supra* note 65, at 442, 445.

n285. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2855-56 (2008) (Breyer, J., dissenting).

n286. See *supra* Parts I, II.A.2; see also Kopel, *supra* note 40, at 164-70 (comparing exempt recreational firearms and assault weapons).

n287. See *supra* Part II.A.1.

n288. See, e.g., Kopel, *supra* note 40, at 171-74.

n289. See, e.g., *Stenberg v. Carhart*, 530 U.S. 914, 958-60 (2000) (Kennedy, J., dissenting).

n290. See *id.* at 961 ("In light of the description of the D&X procedure, it should go without saying that Nebraska's ban on partial birth abortion furthers purposes States are entitled to pursue."); *id.* at 983-89 (Thomas, J., dissenting).

n291. One obvious explanation for the split in *Stenberg* is that, compared to the majority, the dissenters place a generally higher relative value on the fetus. Justice Kennedy, for example, emphasizes testimony that D&X in some renditions is a hair's breadth away from infanticide. *Id.* at 958-59 (Kennedy, J., dissenting). The life interest of the fetus is difficult to define. *Stenberg* discusses the state's interest in the "potentiality of human life." *Id.* at 930 (majority opinion). This reflects that the fetus is not a separate person, but is substantially more than nothing (some grieve over its loss). It is more than just the idea of a life that might emerge. Whatever label we apply to it, it has happened, it exists. But how far apart are these valuations and what else do they tell us? Only in context do we approach an answer. Compare, then, Justice Breyer's majority opinion in *Stenberg* and his dissent in *Heller*. Together they are a textbook illustration of the standard position and perhaps illuminate core convictions that attitudinalists say really control these questions.

One explanation for the standard position is the relative valuation of life-interests. Both the abortion right and the gun right threaten and ultimately consume competing life-interests: the gun right through criminal homicides and legitimate self-defense shootings; the abortion right through destroyed fetuses. One way to arrive at the standard position is to value the fetus as some fraction of a life-in-being. So 1.3 million fetuses destroyed each year are weighted less than 13,000 gun homicides. See Johnson, *supra* note 1, at 843; Alexi A. Wright & Ingrid T. Katz, *Roe versus Reality - Abortion and Women's Health*, 355 *New Eng. J. Med.* 1, 2 (2006). On that measure, the standard position values the fetus at about .01 of a life-in-being.

One might adopt the standard position on the view that the externalities of the gun right weigh more heavily than those of the abortion right. But this is empirically problematic. It rests on the highly contested assumption that firearms impose net social costs while the abortion right only causes opponents and participants some existential angst. It means ignoring evidence that guns are used widely for self-defense and that communities where trustworthy people are armed experience less crime. See, e.g., John R. Lott Jr., *More Guns, Less Crime: Understanding Crime and Gun-Control Laws* 51 (1998); Kleck & Gertz, *supra* note 192, at 185. And that requires erring against the right-claimant on a deeply contested empirical question - precisely the opposite of what Stenberg commands. See *supra* Part III.B.1.e.

Another explanation is that the costs of the abortion right are private and predictable, while the externalities of the gun right spin out at random. But this really collapses back into the fetus valuation question. If we were balancing a life-in-being rather than a fetus, it would not be a privacy issue at all. It would be just like the gun question, where it is no excuse that gun violence occurs in private or between family members. The only difference in the abortion case is that the fetus depends on the mother in a unique way, and in a contest between the two, that dependency lowers the valuation of the fetus.

There is another superficially different explanation that, again, reduces to the valuation question. It emphasizes the mother's autonomy and equality in a world where men and women are both responsible for the pregnancy but women disproportionately bear the burden of caring for the unwanted child. See Ginsburg, *supra* note 204, at 382-83. This transforms the question into a contest between the man and woman who created the fetus. Equality means that the woman should have an equivalent chance to avoid the burden of the unwanted child. It is interesting to compare this argument with the militia-centric version of the Second Amendment that is advanced, for example, by Justice Stevens's dissent in *Heller*. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2824-26 (2008) (Stevens, J., dissenting). Formal militia participation historically has been, and continues to be, explicitly gender-discriminatory. See, e.g., 10 U.S.C. § 311 (2006) (identifying militia members as able bodied males ages eighteen to forty-five, and female members of the national guard). This seems to be an equal or plainer violation of the equality argument. This reduces to the valuation argument because any value attached to the fetus is secondary to the woman's equality claim.

It is then difficult to escape the assessment that the standard position depends on a comparatively low valuation of the fetus. Is it principle or passion that explains this valuation?

n292. See, e.g., 530 U.S. at 983-89 (2000) (Thomas, J., dissenting).

n293. *Id.* at 923 (majority opinion).

n294. See Kopel, *supra* note 40, at 169-70 (alteration in original).

n295. *Id.* at 170.

n296. In 1997, at Pearl High School in Pearl, Mississippi, a sixteen-year-old shot nine classmates using a stolen single-shot deer rifle that "had to be reloaded after every shot." Wayne Laugesen, *A Principal and His Gun*, *Boulder Wkly.*, Oct. 15, 1999, available at <http://www.davekopel.com/2a/othwr/principal&gun.htm>.

n297. Some of the worst outcomes of human violence are the result of extreme imbalances in access to weapons technology. See, e.g., Jared Diamond, *Guns, Germs, and Steel: The Fates of Human Societies* 76

(1999) (describing massacres of native peoples by European invaders with guns). See generally Jay Simkin et al., *Lethal Laws* (1994) (arguing that government-imposed gun control has resulted in genocides). Smaller-scale examples are shootings like the Virginia Tech massacre. See Christine Hauser & Anahad O'Connor, Virginia Tech Shooting Leaves 33 Dead, N.Y. Times, Apr. 16, 2007, available at [http://www.nytimes.com/2007/04/16/us/16cnd-shooting.html?\\_r=1&scp=1&sq=virginia%20tech%20massacre&st=cse](http://www.nytimes.com/2007/04/16/us/16cnd-shooting.html?_r=1&scp=1&sq=virginia%20tech%20massacre&st=cse).

n298. I have long held the view that people react viscerally to the gun question and rarely change their position absent some cathartic event. I have viewed this mainly as a cultural phenomenon. The work of cognitive psychologists tracking the seats of different capabilities and emotions in the brain suggests another possibility - that it might be hard-wiring as much as culture that guides how we approach the gun question. Particularly interesting is the recognition that in our "reptile brain," the cerebellum controls more basic and automatic functions. See generally Daniel J. Levitin, *This is Your Brain on Music: The Science of a Human Obsession* (2007), for a fascinating study of these general ideas. Could it be that the revulsion and fear that people experience viewing just a picture of a firearm keys into some hard-wired survival instinct? Or that the fascination others have with firearms reflects a different version of the same thing? Perhaps thinking about private weapons is a largely hard-wired response to perceived danger. See id.

n299. See Johnson, *supra* note 12.

n300. *Stenberg v. Carhart*, 530 U.S. 914, 957 (2000) (Kennedy, J., dissenting).

n301. *Id.* at 961.

n302. It is almost too easy to criticize assault weapons bans for the absurd focus on pistol grips, bayonet lugs, and flash hiders that are irrelevant to function. Representative Carolyn McCarthy, sponsor of a House bill to renew the 1994 ban, was embarrassed on national television when asked by Tucker Carlson to explain what a barrel shroud was and why her bill proposed to ban them. See Tucker (MSNBC television broadcast Apr. 18, 2007), available at <http://www.youtube.com/watch?v=ospNRk2uM3U>. Pressed, she admitted that she did not know what a barrel shroud was: her guess was the sling or carrying strap. *Id.* Representative McCarthy ran for Congress after losing a loved one to the gunfire of a madman who shot people randomly on a Long Island Railroad train. Peter Marks, *Train Shooting Victim Speaks for First Time Since Injury*, N.Y. Times, Dec. 15, 1993, available at <http://www.nytimes.com/1993/12/15/nyregi on/train-shooting-victim-speaks-for-first-time-sinceinjury.html>.

Almost any reaction to that kind of trauma is understandable. But it is not just Representative McCarthy who presses the view that oddly-defined assault weapons are illegitimate. See, e.g., Press Release, Violence Policy Ctr., U.S. Can Act Immediately to Halt Import of AK-47 Assault Rifles Fueling Gun Violence on U.S./Mexico Border, VPC Tells Congress (Mar. 18, 2009), available at <http://www.vpc.org/press/0903rand.htm>.

n303. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2821-22 (2008).

n304. See 18 U.S.C. § 922(r) (2006).

n305. The 1994 ban was grounded partly in the pre-*Heller* focus on "sporting use" to define legitimacy. See Johnson, *supra* note 106, at 771-72. Post-*Heller*, with its explicit protection of arms ordinarily used for self-defense, the sporting-use designation recedes to the margins.

n306. *Stenberg*, 530 U.S. at 964 (Kennedy, J., dissenting).

n307. *Id.*

n308. See Johnson, *supra* note 65, at 445.

n309. Domestic parts were manufactured for precisely this purpose. See Brownells.com, AK-47 Trigger Group, <http://www.brownells.com/.aspx/pid=22875/Product/> (last visited June 10, 2009) ("Drop-in replacement for factory trigger ... . Made in the U.S.A. to keep your gun in compliance with U.S. Code Title 18 Section 922(r) part-source requirements. Kit counts as three, U.S.-made parts - trigger, disconnecter, and hammer. Single and double hook models available.").

n310. See Alex Roth et al., New Calls for Assault-Gun Ban, *Wall St. J.*, Mar. 13, 2009, <http://online.wsj.com/article/SB123690314709013801.html> (recounting the label "black guns" applied to assault weapons).

n311. *Stenberg*, 530 U.S. at 965 (Kennedy, J., dissenting).

n312. *Id.* at 964-65.

n313. See *id.* at 968.

n314. *Id.* at 958.

n315. *Id.* at 959-60.

n316. *District of Columbia v. Heller*, 128 S. Ct. 2387, 2856-57 (Breyer, J., dissenting).

n317. See Kopel, *supra* note 40, at 164-67.

n318. See *Stenberg*, 530 U.S. at 960-61 (Kennedy, J., dissenting); see also *id.* at 1012 (Thomas, J., dissenting) (levying essentially the same criticism that by ceding authority to the physician to apply the health exception, the majority mandates "unfettered abortion on demand").

n319. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 876 (1992) (plurality opinion).

n320. 128 S. Ct. at 2816-17.

n321. *Id.* at 2817.

n322. See *Stenberg*, 530 U.S. at 961 (Kennedy, J., dissenting).

n323. 128 S. Ct. at 2816-17.

n324. *Stenberg*, 530 U.S. at 967 (Kennedy, J., dissenting). Justice Thomas similarly argues that the *Stenberg* health exception for procedures that have "any comparative health benefits" demands too little. *Id.* at 1012 (Thomas, J., dissenting).

n325. *Id.* at 914, 915 (majority opinion).

n326. *Id.* at 928-29.

n327. See *id.*

n328. *Id.* at 926-29.

n329. *Id.* at 971-72 (Kennedy, J., dissenting).

n330. Johnson, *supra* note 106, at 792 n.427.

n331. 530 U.S. at 1010 (Thomas, J., dissenting).

n332. *Id.*

n333. See *supra* Part III.A.

n334. See *supra* Part III.A; see also Johnson, *supra* note 196, at 102-15 (critiquing the positions advanced by Regan and Thomson).

n335. Compare *Stenberg*, 530 U.S. at 980 (Thomas, J., dissenting) (making several other discrete points that highlight the intersection, by summarizing the basic case that the abortion right is not supported in the text of the Constitution), with Johnson, *supra* note 12, at 138-60 (weighing the textual claims for the abortion and gun rights), and Johnson, *supra* note 74, at 709-11 (showing the right to arms in 44 state constitutions). For Justice Thomas' discussion of the "partial-birth abortion" term that tracks the criticisms that the legislature created the term "assault rifle" and the category in conflict with conventional meaning, see *Stenberg*, 530 U.S. at 1014 (Thomas, J., dissenting). His summary of *Casey*, which he claims is undercut by *Stenberg*, includes a description of *Casey*'s validation of a twenty-four-hour waiting period. *Id.* This is a style of legislative proposal common in both the gun and abortion context. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879-80 (1992) (describing exception to the waiting period where the life or health of the mother was at stake).

n336. *Stenberg*, 530 U.S. at 1014 (Thomas, J., dissenting).

n337. See 428 U.S. 52, 75-76 (1976).

n338. *Stenberg*, 530 U.S. at 1014 (Thomas, J., dissenting).

n339. See, e.g., Kleck, *supra* note 192, at 185.

n340. *Stenberg*, 530 U.S. at 1015 (Thomas, J., dissenting).

n341. *Id.*

n342. *Id.* at 1016.

n343. *Id.* at 1020.

n344. Kopel, *supra* note 38. The assault weapon presents SMUs in terms of ballistics and recoil that can be measured to decimal places. See *supra* Part II. The assault weapon's lower lethality actually complements the state interest in reducing externalities. See *supra* Part II. The significance of this reduced lethality (and the arguable irrationality of a restriction that fails to account for it) should be understood in contrast to the advanced lethality of guns expressly identified as legitimate (e.g., most medium to large game hunting rifles in a variety of repeating technologies). See *supra* Part II.

n345. See *Gonzales v. Carhart*, 127 S. Ct. 1610, 1619 (2007).

n346. *Id.* at 1644.

n347. See *supra* Part III.B.2.a-b (discussing dissents of Justices Kennedy and Thomas, criticizing the adequacy of a peppercorn of SMUs and protection of methodologies rarely necessary to protect life or health).

n348. Johnson, *supra* note 12.

n349. I do not claim that this would satisfy the attitudinalist who might always dismiss articulated principles as just byplay or "worse than useless" bunk. See Dorf, *supra* note 22, at 500.

n350. See *Gonzales*, 127 S. Ct. at 1634-35 ("Partial-birth abortion, as defined by the Act, differs from a standard D&E because the former occurs when the fetus is partially outside the mother to the point of one of the Act's anatomical landmarks."); see also *Stenberg v. Carhart*, 530 U.S. 914, 1006-07 (2000) (Thomas, J., dissenting) ("The [American Medical Association] has recognized that this procedure is 'ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside the womb. The 'partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body.'" (quoting *Brief for Ass'n of American Physicians & Surgeons et al.*, *supra* note 235)).

n351. See Kopel, *supra* note 40, at 164-67.

n352. 127 S. Ct. at 1624.

n353. See 530 U.S. at 971-72 (Kennedy, J., dissenting).

n354. *Gonzales*, 127 S. Ct. at 1637 ("On the one hand, the Attorney General urges us to uphold the Act on the basis of the congressional findings alone. Although we review congressional fact-finding under a deferential standard, we do not in the circumstances here place dispositive weight on Congress' findings. The Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake." (citation omitted)).

n355. *Id.* at 1636-38 (citations omitted).

n356. *Id.* at 1637-38.

n357. *Id.* at 1638-39.

n358. The Gonzales majority was made up of the same five Justices who voted in the Heller majority.

n359. See *supra* Part III.B.2.b (noting that the entire utility is grounded in conflicting testimony by medical experts about the usefulness of D&X to the abortion doctor).

n360. See, e.g., Kopel, *supra* note 40, at 168-69.

n361. See *Gonzales*, 127 S. Ct. at 1636.

n362. See *supra* note 138 and accompanying text (discussing the regulatory paradox).

n363. See *Gonzales*, 127 S. Ct. at 1637.

n364. *Id.*

The instant cases, then, are different from *Planned Parenthood of Central Mo. v. Danforth*, in which the Court invalidated a ban on saline amniocentesis, the then-dominant second-trimester abortion method. The Court found the ban in *Danforth* to be "an unreasonable or arbitrary regulation designed to inhibit, and having the effect of inhibiting, the vast majority of abortions after the first 12 weeks." Here the Act allows, among other means, a commonly used and generally accepted method, so it does not construct a substantial obstacle to the abortion right.

*Id.* (citation omitted) (quoting *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 79 (1976)).

n365. David Kopel puts the point in human terms:

One evening, a gang brawl broke out in the street next to the northwest Denver home of a young woman named Sharon Deatherage. A police car happened upon the scene, and sped away without taking any action, never to return. As a result of this experience, the young woman, who lived alone, decided that she would have to take measures to protect herself because she could not rely on the Denver City government for protection. Because of an injury to her wrist, she was unable to use a handgun. At the suggestion of a firearms instructor, she bought an M-1 carbine, which is a relatively small, low-powered semiautomatic rifle, and which has been commercially available for nearly half a century. Not long after she bought the weapon, the City of Denver turned Ms. Deatherage into a criminal by declaring her M-1 carbine and its attached 30-round ammunition magazine an illegal "assault weapon."

Kopel, *supra* note 38, at 381 (footnote omitted). As the example illustrates, someone who wants a gun for self-defense but is physically unable to use a handgun must choose another suitable gun. The M-1 carbine assault rifle is perhaps the lowest-recoiling gun firing a cartridge still suitable for self-defense, making it and other low-recoil assault weapons the best available option for self-defense. *Id.*

n366. 127 S. Ct. at 1636.

n367. See 530 U.S. 914, 964 (2000) (Kennedy, J., dissenting).

n368. 127 S. Ct. at 1636.

n369. *Id.* at 1638.

n370. See discussion *supra* Part II.B.1.

n371. See discussion *supra* Part II.B.2.

n372. *Gonzales*, 127 S. Ct. at 1624, 1636.

n373. *Id.* at 1638.

The Government has acknowledged that preenforcement, as-applied challenges to the Act can be maintained. This is the proper manner to protect the health of the woman if it can be shown that in discrete and well-defined instances a particular condition has or is likely to occur in which the procedure prohibited by the Act must be used. In an as-applied challenge the nature of the medical risk can be better quantified and balanced than in a facial attack.

*Id.* at 1638-39 (citation omitted).

n374. This comparison pits the strong argument, that partial-birth abortion is never the best alternative, against the assault weapon's objectively measurable SMUs and assault weapons bans' irrational attribution of dangerous qualities to features that only affect appearance.

n375. 127 S. Ct. at 1639 (citation omitted).

n376. *Id.*

n377. *Id.*

n378. *Id.* ("We note that the statute here applies to all instances in which the doctor proposes to use the prohibited procedure, not merely those in which the woman suffers from medical complications.").

n379. See *supra* Part III.A.

n380. See Jeani Chang et al., Pregnancy-Related Mortality Surveillance - United States, 1991-1999, MMWR Surveillance Summaries, Feb. 2003, at 1, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5202a1.htm>.



**Testimony of David T. Hardy**  
**before the**  
**Senate Committee on the Judiciary**

Regarding

The Assault Weapons Ban of 2013  
S. 150

**Summary**

*“Assault Rifles”* The very term “semiautomatic assault rifle” is internally contradictory. In World War II, rifles of standard military power could not be made full automatic, because the recoil (“kick”) was too powerful. The “assault rifle” concept involved cutting the cartridge’s power, and thus its recoil, in half, so that it could be controlled in full automatic fire. An assault rifle redesigned to be semiautomatic is simply a semiautomatic firing cartridges with half the traditional military power.

*Definition by trade name.* Since “semiautomatic assault rifle” is contradictory and meaningless, legislation supposedly directed at such firearms must define the term arbitrarily. S. 150 lists rifles by their trade name and declares them “semiautomatic assault rifle,” even though many fire cartridges of full military power, or are already tightly regulated, or do not exist in the United States. It bans guns that are functionally identical to those it exempts from being banned – shooting the same cartridge from the same magazines, the main difference being that the exempted rifle has a wooden stock. In short, S. 150

- Arbitrarily bans guns that have almost nothing in common, and
- Arbitrarily bans some guns and exempts other that are functionally identical.

*Definition by features.* S. 150 also bans firearms that have certain features. The features have nothing to do with crime, and are sometimes based on myth. One banned feature is the “pistol grip” – but almost all modern rifles and shotguns have a pistol grip. If “separate pistol grip” is meant, such a grip is an artifact of re-designing the rifle stock so as to reduce tendency of the barrel to flip up during recoil. Another banned feature is the folding stock – but the AR-15 folding stock

only shortens the rifle by three inches, hardly making it concealable. A third is the presence of a grenade launcher on the barrel – but functional rifle grenades have long been outlawed and are unobtainable, so there is nothing it can launch. It cannot be said that any of these measures will affect criminal use.

The same may be said of banning new manufacture of large capacity magazines. In a mass slaying, police response time averages around twenty minutes. The criminal has plenty of time to reload. Moreover, the great majority of mass killers have planned carefully and carried two, three, or more guns.

It is sometimes claimed that these are “weapons of war” that “belong on a battlefield.” With the exception of full automatic fire (fire like that of a machine gun, of which semi-automatics are by definition not capable),<sup>1</sup> there has historically been little distinction between military and civilian arms. In the 1920s, the Director of Civilian Marksmanship sold Krag military rifles to the public, and after WWII it sold Springfield 1903s and M-1 rifles and carbines. Books were published (I have one in my library) showing how to convert these into deer rifles and target firearms. Manufacturers created civilian rifles based on military designs. At many points, civilian arms were more advanced than military ones. Americans for a century used rifles while their military stuck to smoothbores. Our civilians used repeating rifles for twenty years while the military stayed with single-shot ones. Civilians were hunting with semiautomatics (the Remington Model 8) a quarter century before the military went semiautomatic with the M-1. Other than full automatic fire, there simply is no line between military and civilian arms.

#### **Nature of the “Semiautomatic Assault Weapon” Concept**

“Assault rifle” is a rough translation of the German “sturmgewehr,” or “storm-rifle.” The concept underlying this class of firearms dates to World War II. Most of the nations involved in that conflict entered it with semiautomatic or bolt action rifles firing cartridges that were remarkably similar, developing somewhat over 2,000 foot-pounds of energy, and designed to be effective out to 600-800 yards. The United States, for example, entered the war with the M-1 Garand, firing the .30-06 cartridge in semiautomatic mode, *i.e.*, one shot per trigger pull.

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<sup>1</sup> I include under full automatic firearms which can be set to fire three round bursts. Full automatic means, in essence, that a firearm shoots more than one shot per trigger pull. Since most modern firearms of this type can also fire semi-automatic, they are sometimes called “select fire.”

These cartridges were too powerful for full automatic fire from a standard weight rifle: no soldier could stand the recoil or control the rifle at full automatic, with the rifle slamming his shoulder ten times a second or more.

During the War, however, German engineers realized that infantry battles occurred at 200-300 yards, not at 600-800 yards. The existing military rifles were greatly over-powered at the closer ranges.

The engineers reasoned that if the military cartridge's power were cut by about half, it could be fired at full automatic, and still suffice for conflicts at a realistic 200-300 yards. This gave rise to the first sturmgewehr, the MP 43/44, firing a *smaller and less powerful* rifle cartridge at full automatic.

Thus *any true "assault rifle" is capable of full automatic fire; that is its core purpose. A "semiautomatic assault rifle" is simply a semiautomatic rifle with half the power of a standard WWII semiautomatic.* To give a concrete example, we can compare two semiautomatic rifles, the M-1 of World War II, and the modern AR-15:

Rifle	Cartridge	Bullet Muzzle Energy
M-1	.30-06	2,400 foot-pounds
AR-15	.223	1,250 foot-pounds

So we must ask what is the origin of the idea that there is such a thing as a "semiautomatic assault rifle," and that it is somewhere especially dangerous? In 2011, 323 homicides were committed using rifles of *any* type.

This is 2.5% of U.S. homicides; over twice as many were committed with bare hands. Of that 2.5%, "semiautomatic assault rifles" are a fraction, and likely a small one. Why is this unknown, but tiny, fraction of homicides the focus of so much concern and effort?

We can precisely pin down the origin of the idea that "semiautomatic assault weapons" should be a legislative focus.

In the late 1980s, the Violence Policy Center proposed it as a way to give new life to the quest for gun control, noting "It will be a new topic in what has become to the press and public an 'old debate,'" and that "Efforts to restrict assault weapons are more likely to succeed than those to restrict handguns." It explained that these rifles'

menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks

like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.”<sup>2</sup>

The idea caught on. Organizations advocating gun control quickly dropped “handgun” from their name and inserted “gun” to reflect an agenda increasingly aimed at rifles. The organization long known as “Handgun Control Inc.” became “The Brady Campaign to Stop Gun Violence.” “National Coalition to Ban Handguns” became the “Coalition to Stop Gun Violence.”

### **The Scope of the Second Amendment: “Firearms in General Use”**

*Heller v. District of Columbia* noted that “*Miller* said, as we have explained, that the sorts of weapons protected were those ‘in common use at the time.’” 128 S.Ct. at 2817. I have elsewhere noted my difficulties with this test,<sup>3</sup> but it is clear that the AR-15 platform has become the epitome of a firearm “in common use.”

I refer to it as a platform, since the AR-15 is “modular”; its receiver has two parts: an upper receiver into which the barrel mounts, and a lower receiver, which holds the firing assembly, and mounts the buttstock and lower grip. The two can be disconnected in about a minute. By mounting another upper receiver and barrel, an AR-15 can be enabled to fire a wide range of rifle and handgun cartridges, and the length and weight of the barrel can be changed to suit the owner’s needs. A single rifle can thus suffice for target matches, law enforcement, and hunting small and large game. While other firearms can be re-barreled to a new caliber or cartridge, this is generally work that can only be done by a gunsmith with specialized tools. An AR-15 owner can, however, switch in a minute between .223 or .22-250 for small game and target competition, 6.8 mm for deer hunting, and .50 Beowulf for home protection or larger game.

The AR-15 is probably the semiautomatic rifle in *most* common use by Americans today. Assessing this is not a simple task, because rifle manufacturers are required to report to the government only the total number of rifles made, not break that number down by design. I base this conclusion on the following:

1. A friend and fellow researcher, Mark Overstreet, has compiled a breakdown of rifle manufacturers who produce *only* AR-15 type rifles. In 2008, the

<sup>2</sup> <http://www.vpc.org/studies/awaconc.htm>

<sup>3</sup> Among other things, it tends to be circular. In context, it also tends to be militia-centric, whereas *Heller* focuses upon personal self-defense.

most recent year for which data was available, these manufacturers produced 22% of American civilian rifle production.

2. There are also many manufacturers who make AR-15s together with other firearms, and this number is rising. For example, the handgun manufacturer Smith and Wesson recently brought out two rifles, both of them AR-15 types. Ruger Arms, which manufactured the AR-15's main competition, the Ruger Mini-14, has now brought out its own AR-15 platform rifle.
3. In 2010, the National Shooting Sports Foundation surveyed over 8,000 shooters. The results indicated that about 8.9 million Americans went target shooting with AR-15 type rifles in the previous year.<sup>4</sup>
4. A 2012 survey by the National Shooting Sports Foundation found that 26.3% of shooters owned an AR-15-type firearm, up from 18.1% the previous year. In addition, 21% of shooters who did not already own one planned to acquire one in the next year.<sup>5</sup>

Based on these data, it is clear that the AR-15 platform qualifies as a firearm "in common use." The same would be true of the AR-15's standard magazines, which hold 20 or 30 rounds. The number of these in use (many of them sold as surplus by the government itself) is certainly in the tens, and perhaps in the hundreds, of millions.

Of course, the AR-15 is only one firearm that would be banned under proposals such as S. 150. To gain an estimate of how many would be banned, I consulted the 2012 Gun Digest, a 562-page book giving an extensive list of firearms in current production. Since the banned features are cosmetic, I examined those semiautomatic rifles that had images shown. S. 150 would ban 51 of the 57, or 89%, of the semiautomatic rifles so listed. S. 150 clearly restricts rifles "in common use," and which are thus constitutionally protected.

### Permissible Restrictions

Of course, constitutionally-protected activity is subject to *some* restrictions. Freedom of speech does not protect blackmail threats, and freedom of religious belief does not generally protect illicit action based on that belief. The *Heller* decision indicates that arms restrictions must pass some level of heightened

<sup>4</sup> <http://www.nssf.org/NewsRoom/releases/show.cfm?PR=041910.cfm&path=2010>.

<sup>5</sup> [http://www.nssf.org/PDF/research/0412SurveyTrackerSupplement\\_MSR.pdf](http://www.nssf.org/PDF/research/0412SurveyTrackerSupplement_MSR.pdf).

scrutiny – either strict scrutiny or intermediate review – which alike require proof of some relationship to genuinely (*i.e.*, not in theory or speculation) achieving an important legislative goal, while minimizing unnecessary impact on the protected activities. There are two considerations here, relating to the persons affected and to the arms regulated.

### 1. Persons Affected

Police and “civilians” own firearms for the same reason: self-defense against criminal activity. It is difficult to justify any legislation that would bind one but not the other, when both have the same purpose and need. Law enforcement officials today commonly carry handguns with large capacity magazines, and the AR-15 is a popular squad car gun.

The Department of Homeland Security recently sought bids for 7,000 rifles in .223 caliber, with pistol grips and folding stocks, each with two 30 round magazines.<sup>6</sup> They were not to be called “assault rifles,” let alone “weapons of war,” but rather “personal defense weapons.” I would submit that private citizens also need “personal defense weapons.”

Even less explicable are laws which (like S. 150) exempt not only serving LEOs, but also retired ones. Retirement includes disability retirement, which includes disability due to mental issues. A measure which imposes restrictions on private citizens that are not imposed on government retirees found to suffer from mental disorders is plainly arbitrary and cannot be justified under the Second Amendment.

### 2. Scope of Regulation

As noted above, “semiautomatic assault rifle” is internally contradictory and thus meaningless. A “semiautomatic assault rifle” is simply a semiautomatic rifle of about half standard military power. Drafters of legislation are thus forced to define what they would restrict in ways that are arbitrary and irrational.

One approach is to ban rifles by name; this is *exceptionally* arbitrary, since it can ban one firearm while allowing others with exactly the same capabilities to be made and sold. S.150 bans the AR-15 platform but not the Ruger Mini-14 (indeed, the Mini-14 is expressly exempted from any ban), even though both firearms are functionally identical. Here is a simple comparison of the two firearms:

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<sup>6</sup> <http://radioviconline.com/department-of-homeland-security-sport-rifle-ar-15-suitable-for-personal-defense/>

	Cartridge	Standard Magazine	Length	Weight
AR-15	.223	20-30 rounds	35.5"	6.3 – 6.9 lbs
Mini-14	.223	20-30 rounds	37"	6.7 – 7 lbs

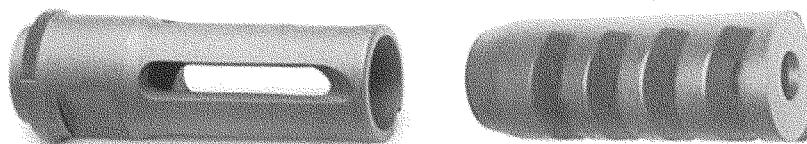
The two rifles are functionally identical. The main difference is that the Mini-14 has a conventional wooden stock and looks “traditional.” Restrictions upon a constitutional right cannot be based on whether an arm has a wooden or plastic stock.

The other approach is to ban rifles with certain features, cosmetic in nature, affecting appearance but not function. To take some examples, from S.150:

*Grenade launcher on end of barrel.* Any real, functional, rifle grenade is so tightly regulated as to be impossible to obtain. A launcher for one is a matter of appearance, not of function. S.150 strangely includes “rocket launchers.” To the best of my knowledge, no one has ever developed a rifle-mounted rocket launcher, probably because its exhaust would set the user on fire.

*Flash suppressors/threaded barrels.* The flash suppressor is a small structure at the end of the barrel, designed to minimize the firearm’s flash at night. With modern ammunition, fired at semi-automatic rates, it is nearly impossible to see the flash, even without such a suppressor. I have verified this by firing an AR-15 with and without the suppressor in a completely dark rifle range. This may explain why some firearms (*e.g.*, the AK-47) have no suppressor. Again, this is not something that has any effect on function or on criminal use.

There is another structure that can be put on the end of the barrel, known as a muzzle brake. This diverts gasses sideways, thereby reducing recoil. Under the 1994 ban—



This is a flash suppressor, and forbidden.      This is a muzzle brake, and allowed.

The main difference is that the flash suppressor has its slits parallel to the barrel, and the muzzle brake has them running at right angles to it. Changing the angle of

the slits cannot have any effect on crime. This is arbitrary and thus unconstitutional.

S. 150 attempts to sidestep the issue by banning any firearm with a barrel threaded to take any device. In that event, flash suppressors and muzzle brakes alike will simply be silver-soldered in place, rather than held by threads. S. 150 is directed at cosmetic features, but in this case will not affect even those.

*"Pistol grips."* S. 150 lists this as a banned feature. I put this in quotations since *almost all* modern rifles and shotguns have a pistol grip.



The rifle above (a 1903 Springfield) has no pistol grip; the rifle below (a modern Remington deer gun) has one. Such a grip simply provides a more comfortable position for the rifleman's hand.

Indeed, S. 150 defines the term broadly, to include almost anything and any rifle: "The term 'pistol grip' means a grip, a thumbhole stock, or any other characteristic that can function as a grip." By that definition, even the 1903 Springfield (and for that matter, a 17<sup>th</sup> century musket) has a "pistol grip." They have parts of the stock that are designed to be "gripped," which suffices under S. 150.

What was intended, I presume, is a pistol grip *separate from the buttstock*, the portion of the stock that leads back to the rifleman's shoulder. This is the definition used in the 1994 ban, but it is absent from S. 150. An example:





Here, the pistol grip is separate from and below the buttstock. The separate pistol grip is a byproduct of designs that raised the buttstock, in order to reduce “muzzle flip.” When a rifle fires, the recoil (or “kick”) comes back along the line of the barrel. Traditionally, the line of the barrel would pass well above the center of the shooter’s shoulder. (visualize, on the above three images, the line of the barrel and the center of the shooter’s shoulder). This causes the rifle to flip up in recoil. This was undesirable in full automatic fire, since only the first shot would go where it was aimed, the following shots would tend to go high.

The solution was to move the shoulder stock higher, closer to the line of the barrel, thus making the recoil push the shooter straight back, without the barrel flipping upward. But if the pistol grip remained integral with the buttstock, the hand holding the grip would be twisted into an unnatural position. The solution was to make the pistol grip separate from the buttstock. *This result was an artifact of the engineering decision to raise the buttstock.*

With semiautomatic rifles, the problem of the rifle climbing during firing a burst does not exist. The separate pistol grip is a matter of appearance, not of function. Again, this has no effect upon criminal use, and thus is arbitrary and impermissible as regulation of a constitutional right.

*Folding or Telescoping Stocks.* These were originally designed for paratroopers, who had to jump through a narrow hatch. They remain in use because some like their looks, and they make it a little easier to exit from a vehicle. I emphasize “a little.” Collapsing the AR-15’s folding stock shortens the rifle an entire three and half inches, from 35.5” to 32” in length. It hardly makes it “concealable.” Again, an arbitrary restriction is imposed.

*Barrel shroud.* It is sometimes stated that the barrel shroud is intended to protect the shooter’s hand from a hot barrel, and S. 150 makes exactly this statement. While this cannot be ruled out, I seriously doubt it. American rifles have been fitted with its equivalent – a wooden upper handguard – since the Krag rifle of 1892, which was a rather slow-to-reload bolt action rifle.

Further, on many rifles (1903 Springfield, the 1898 Mauser) the “handguard” doesn’t cover the area above where the shooter’s hand would rest, while on others (the Krag, the 1903 Springfield, the British Enfield), it extends almost to the end of the barrel, where the shooter’s hand cannot reach.

A more likely explanation was that these devices were meant to protect the barrel from damage during rough handling. On the AR-15, this would certainly be the case. The AR-15’s shroud protects the gas tube, a small and easily bent or crushed aluminum tube atop the barrel that carries powder gasses back to work the action. What such a barrel shroud would have to do with criminal use is beyond me.

To sum up: the term “assault rifle” has a specific meaning, but requires that the firearm in question be capable of full automatic fire; that is the reason for halving its power. If made into a semi-automatic, it is simply a semi-auto with half full military power.

Because “semi-automatic assault rifle” is a contradiction in terms, legislation aimed at this fiction must arbitrarily focus upon considerations such as a firearm’s trade name or its appearance (down to a bayonet lug or where the grip is located). S150 takes both approaches.

I have outlined above why the list of cosmetic features is meaningless and arbitrary. S. 150’s attempt to ban guns by name fares no better. The listed guns include:

The FN-FAL, a full-size semiautomatic rifle in .308 Winchester, comparable to WWII full power military cartridges, and not an “assault rifle” by any possible definition.

The HK91, CETME Sporter, AR-10, L1A1 Sporter, and the SAR-48, which are the same, and shoot the same cartridge.

The Thompson M1SB, which shoots a pistol cartridge and is covered by the National Firearms Act (meaning the purchaser must register with ATF and go through an FBI fingerprint check).

The Daewoo K1 and K2, which are full automatic and require the same registration (I can find no indication that there even *are* any of these in the U.S.).

The Steyr AUG, which is a collector’s item costing \$2,000 - \$5,000.

In short, the named firearms appear to be chosen in a completely arbitrary manner, including full size rifles of full military power, rifles that shoot low-power pistol cartridges, firearms already required to be registered, rifles that apparently do not exist in the U.S., and expensive collector pieces. Such arbitrary restrictions cannot be justified as limits on a constitutional right.

**“Semiautomatic Assault Rifles” and the  
Question of Self-Defense.**

As noted above, the Department of Homeland Security is even now soliciting bids for 7,000 “Personal Defense Weapons,” meeting the definition of “Semiautomatic Assault Weapons,” each to be delivered with two 30 round magazines. Americans who are not government employees have similar needs for “Personal Defense Weapons.”

Here in the southwest, no sane person approaches the border without the ability to defend themselves: the odds are running across drug or people smugglers who resent your presence and are prepared to give a pointed display of their displeasure are simply too high. I am informed by ranchers (and by local criminal defense attorneys) that marihuana smugglers commonly carry pistols, but cocaine smugglers (who carry less of a load) favor rifles.

A worse risk is encountering a “rip crew,” such as the one that murdered BP Agent Brian Terry: the only thing more dangerous than running into a members of a drug cartel is running into people who make their living robbing drug cartels.

Among these ranchers, the AR-platform is a favorite. It is lightweight and can easily be carried, accurate far beyond pistol ranges, and gives the ability to protect against gangs of drug smugglers.

**Outlawing Private Firearm Sales (i.e. those that do not  
Go through a Federally Licensed Dealer).**

This is not a portion of S. 150, but deserves some comment. Three reflections are appropriate here.

First, claims have been made that about 40% of firearms are acquired through private sales. The only evidence here is a 1994 survey that involved only 251 respondents. The conclusion was that 17% had acquired from a member of the family, 12% from a friend, and 4% at a gun show.<sup>7</sup> The legislative proposals that I

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<sup>7</sup> Nat’l Institute of Justice, *Guns in America* (May 1997) at 6. Online at <https://www.ncjrs.gov/pdffiles/165476.pdf>. I say “at most” because licensed dealers can also sell

have seen would exempt transfers between family members, and so (if this small sampling is accurate, and it may not be)<sup>8</sup> we are at most talking about 16% of acquisitions, not 40%.

Second, claims have been made that gun shows are a source of criminal guns. Gun shows probably have an exceptionally high percentage of off-duty police in attendance, and thus are unlikely to attract criminals. The Bureau of Criminal Justice Statistics has done two surveys, each of thousands of incarcerated criminals. Those who possessed a gun were asked for its source. Both surveys found that under one percent named gun shows as their source: 0.6% in one survey, 0.7% in the other.<sup>9</sup>

Third, a ban on private sales will be unenforceable until far in the future. BATF reports on tracing indicate that the average time between a traced gun's first retail sale, and its tracing (which reflects when it came to the attention of police, for whatever reason), is over eleven years. So for a great many years into the future, the average firearm will have been circulating before the ban, and thus could have acquired in a private sale.

Fourth, even decades into the future, it will be difficult to prove a case of illegal private sale, unless the suspect helpfully confesses. Suppose a person with a firearm comes to the attention of law enforcement, and tracing shows the firearm was first sold at retail, to someone else, after the effective date of the ban on private sales.

The government still doesn't have a case. It still must be shown, beyond a reasonable doubt, that the transfer to the present possessor did not involve passing it, used, through a licensed dealer, and to prove that BATF must examine the records of every licensed dealer in his State. This is an impossible burden in a simple firearms possession case.

These legal problem could be solved in one of two ways, either of which, I submit, is constitutionally unacceptable, or practically impossible. Congress could, in addition to the private sales ban, either

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at gun shows, so asking people whether they bought from a dealer or at a gun show divides those responses.

<sup>8</sup> It also found that 68% of handguns and 60% of long guns were acquired as new rather than used. Under the Gun Control Act of 1968, it is impossible to acquire a new gun except through a licensed dealer. These numbers appear inconsistent with 40% claiming that they obtained the firearms through a non-dealer, even if we assume that every single used firearm was bought privately, which is quite unlikely.

<sup>9</sup> BCJS, Firearm Use by Offenders (Nov. 2001). Online at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/fuo.pdf>. I have heard the figure of 1.7% mentioned, but I have no idea of its origin. The actual figures given were a fraction of that.

1) Impose national firearm registration, covering all firearms in private possession,<sup>10</sup> or

2) It could make *all* firearm possession illegal, period, providing for a defense if the gun owner can prove they bought the gun before the effective date of the ban, or bought it from a licensed dealer after the ban. Then anyone who possesses a firearm could be arrested and indicted on that possession alone, and be made bear the burden of proving the legality of their acquisition of the firearm at trial.

Absent (1) or (2), a private sales ban could not be enforced. (1) would require greater precision than appears possible at this time,<sup>11</sup> and (2) would be, I submit, clearly unconstitutional, since it treats exercise of a constitutional right as presumptively a crime.

### Large Capacity Magazines

S. 150 would “grandfather in” existing magazines. As I note above, the number of AR-15 magazines alone in private possession numbers in the tens and perhaps hundreds of millions. Add in large capacity magazine for all other firearms and we are certainly over a hundred million. S. 150 accordingly cannot be expected to have any effect on criminal misuse.

Even if all magazines of this sort could be made to vanish, S. 150 could have little if any effect on mass slayings. Most of those killers prepare in advance, and so commit their crimes while carrying more than one firearm. The Columbine killers carried two shotguns, two pistols, and a carbine. At Virginia Tech, Cho carried two pistols. The Aurora, Colorado killer began with a shotgun, then

<sup>10</sup> Requiring dealers to report, and an agency to register, all future sales would be insufficient, since a result of “no record of sale through a dealer could be found” would not exclude the possibility that the present firearm possessor acquired the firearm prior to the effective date of the ban on private sales. As noted above, the average time between first retail sale and tracing is eleven years, so the possibility of an initial lawful transfer will likely continue through our lifetimes.

<sup>11</sup> Present databases on firearms are notoriously unreliable. The problems with the National Firearms Act database have been repeatedly documented over the past four decades. My experience with the database on stolen firearms suggests it has even greater problems. I represented a dealer whose inventory was illegally seized. When I secured its return, ATF said it could not return six firearms, since they were stolen. We demonstrated that five of the six entries were wrong – most involved reports of the firearms being stolen, far away, at dates when they were already in the ATF evidence locker. The sixth had a different serial number from the report, so the data was erroneous in six out of six cases.

switched to a rifle (which jammed) and to a handgun. The killer at Newtown apparently had a rifle and two handguns, plus a shotgun in his car. Under those conditions, the size of the magazines in the criminal's guns determines nothing.

It is also noteworthy that S.150 classifies as an assault weapon any shotgun whose magazine can hold more than five rounds of ammunition: "a fixed magazine with the capacity to accept more than 5 rounds." This would encompass almost all semiautomatic shotguns. A shotgun's magazine capacity is traditionally expressed in terms how many 2 ¾ inch or 3 inch shells it can hold.<sup>12</sup>

In recent years, however, ammunition manufacturers have produced low-recoil ammunition that is appreciably shorter than this – 2 inch, and even 1 ¾ inch shells. A shotgun whose magazine holds five 2 ¾ inch shells can easily hold six 2 inch ones; a shotgun that can hold five 3 inch shells can hold seven 2 inch ones. *S.150's definition might thus restrict the majority of semiautomatic sporting shotguns.*

In sum, there is no reason to believe that a limit on magazine size will reduce mass killings. Almost all such killers carry multiple guns, often three or four, and with police response time averaging about twenty minutes, have plenty of time to shoot and reload. What *does* prevent mass killings is a defender, out of uniform and thus not known to the killer, who can deliver immediate and accurate counter-fire. Thus:

- In San Antonio, an off-duty officer shot the attacker down, and limited losses to two persons wounded.<sup>13</sup>
- In the New Destiny Center shooting in Aurora, Colorado, the gunman was brought down by Jeanne Assam, a church-goer with a concealed weapons permit; the death toll was two.<sup>14</sup>
- The shooting at Pearl High School in 1997 ended when the vice-principal drew a .45 and confronted the shooter. The death toll was three.

A study, made by a non-academic but using a thoroughly scientific approach, plotted the average number of deaths in mass slayings stopped by police and in those stopped by private individuals (whether armed or unarmed).<sup>15</sup> The results were:

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<sup>12</sup> Or 3 ½ inch shells, in the case of magnum chamberings.

<sup>13</sup> <http://pjmedia.com/tatler/2013/01/02/armed-defenders-do-stop-mass-murders/>

<sup>14</sup> <http://freedomoutpost.com/2012/07/the-aurora-shooting-you-didnt-hear-about-in-the-media/>

<sup>15</sup> <http://dailyanarchist.com/2012/07/31/auditing-shooting-rampage-statistics/>

Average deaths in mass slayings stopped by police arrival:	14.3
Average deaths in mass slayings stopped by private citizens:	2.3
Average deaths in mass slayings stopped by armed citizens:	1.8

This reflects the difference between a response time of twenty minutes, and one of ten seconds.

### Conclusion

To pass constitutional muster under any applicable standard of review, a law must bear a *provable*, not speculative, relationship to an important social goal, and not unnecessarily impact other exercises of a constitutional right. S. 150 fails under this standard. It has no provable relationship to reducing crime or mass slayings. It places considerable burdens on lawful exercise of a constitutional right. There was only one Adam Lanza, one Seung-Hui Cho, but S. 150 attempts to deal with them by regulating the other 300 million Americans' exercise of a constitutional right. S. 150's arbitrary standards fail any test for constitutionality and, for that matter, wise policy.

- S. 150 arbitrarily bans guns by name, including firearms that have little in common, some which do not even exist in the U.S..
- It arbitrarily bans firearms by features, where the features have no relationship to criminal use.
- It would ban all semiautomatic rifles or shotguns with a "pistol grip" – and virtually all semiautomatic rifles and shotguns have these, so it effectively bans *all* semiautomatic long guns.
- It arbitrarily applies restrictions to peaceful private citizens, while exempting LEOs who had to be retired due to mental disorders.

**The Honorable Sandy Adams**  
**Former United States Representative (R-FL-24)**  
**Orlando, FL**

Before I begin I would like to state that my thoughts and prayers go out to the families, first responders, and the community of Newtown. As someone who is trained in Critical Incident Stress Management, I recognize that instead of feel good legislation, this community needs our support and our prayers.

I am here as a mother, sheriff's deputy and former legislator. This issue is not political to me, it's personal.

I spent over 17 years as a law enforcement officer in Orange County Florida. During which time, I had the unfortunate experience of looking down the barrel of a rifle with the assailant's finger on the trigger knowing if that trigger were pulled, I would not be here today. I have also experienced the fear that grasps you when the laser sight from a 9mm Desert Eagle puts a dot on you.

And, after my husband died in the line of duty in 1989, I was trained in Critical Incident Stress Management. I tell you this so that you know that my comments here today are not based on any political motivation but on my personal beliefs and experiences.

Ten years ago, I ran for office because as a law enforcement officer, I watched as elected officials would pass legislation without any regard for the implementation and enforcement of such laws. Once in office, I tried to ensure that the laws already on the books were enforced.

You see, it is not a lack of laws that is the problem; it is the lack of enforcement of existing laws.

One such glaring example would be our own Justice Department's failure to enforce--and yes, even violate--our laws by allowing drug cartels and other criminals to purchase firearms through the flawed Fast and Furious program.

Criminals by their very definition do not obey the law. Instead of creating feel good legislation that does nothing to stop the criminal behavior, and takes away a law-abiding citizens ability to defend themselves, why not address the issue how to insure the current laws on our books are enforced? Why not look to the states to see what, if anything, they have successfully done to address this issue?

In 2006, as a member of the Florida House of Representatives, I sponsored House Bill 151, which required the state to compile and maintain an automated database of persons prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. The bill also required clerks of court to submit such records to law enforcement and authorized law enforcement to



disclose the collected data to federal governmental agencies and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.

Two years later, the companion bill expanded the use of the mental health database so that law enforcement could also check residents applying for concealed carry permits and firearm licenses. This bill, SB 1616, also expanded the definition of "adjudicated mentally defective" to include those involuntarily committed to outpatient mental health treatment centers.

Both of these bills are excellent examples of laws that improve public safety by keeping firearms out of the hands of the mentally ill without endangering the freedoms of law-abiding gun owners.

We are at a turning point now. You have an opportunity to do what is right, and that may not be the easiest route. It is not time for feel good legislation so you can say you did something; it is time for a true discussion about the culture of violence and how to prevent violent crime.

I believe the combination of violent video games to violent movies, the desensitizing of death, blood and gore in their every day lives is only making the culture more violent. Taking guns from law-abiding citizens while leaving them defenseless against violent criminals, who by their very definition do not abide by the law is not the answer and it is definitely not the right thing to do.

I recently sat in disbelief, amazement and horror as I listened to politicians make suggestions and statements to possible victims of violent crimes such as grab a ballpoint pen and stab your assailant, shoot a shotgun off your balcony or tell your assailant you have a disease. So, let's look at these recommendations.

First, as a law enforcement officer I have been trained that reaction versus action is always slower. The criminal already knows what he or she is going to do and the victim/law enforcement officer has to react. So with that in mind, law enforcement officers are trained that we need to keep a 21-foot distance from an armed attacker with a knife or other weapon. So using a ballpoint pen against an attacker who is armed with a weapon may be something you can try as a last resort, but it would not be my first choice.

Another suggestion was for someone to shoot a double-barrel shotgun off your balcony. In training and self-defense classes, gun owners are that you never fire a gun unless you know where the bullet is going. Shooting indiscriminately over a balcony could injure an innocent person and/or alert your attackers to your location and cause them to open fire on you while you are in plain sight on the balcony, fumbling to reload.

Again, my training tells me this is not a great idea. Take cover, call for help and prepare yourself to do what is necessary to protect yourself and your children if need be just like the mother did recently.

I think we all have heard about this young mother in Georgia who heard someone breaking into her home, called for help, fled upstairs with her two young sons and hid giving the “burglar” full reign downstairs to take whatever valuables he could. But, instead this criminal sought out this young mother and her two sons—coming through three locked doors to get to where they were hiding. But the criminal did not know that this mother was prepared to do what she had to do to protect herself and her children.

Because when that criminal came through the final locked door, the mother opened fire with a pistol until the assailant retreated.

Now, I would like you to think about another scenario. What would have happened to this young mother and her children if she had not been armed and willing to defend them? What if there had been more than one attacker? Is it your position that she should not have been able to defend herself and her children?

These incidents play out all across America every day and, in a lot of cases, the outcome isn’t as good. Law enforcement agencies response times are getting longer forcing law-abiding citizens across this nation to rely only on themselves for protection because law enforcement is too far away. Why would you want to leave law-abiding citizens unable to protect themselves and their families?

Violent crime is getting more violent, and law-abiding people must be allowed to have the tools necessary to defend themselves.

And, when it comes to the suggestion that a rapist can be stopped by simply telling him you have a disease—let us remember that rape isn’t merely a sexual act, it is a criminal act and the attacker is not usually prone to rational thinking. Again, think back to Ted Bundy, with his deranged mind, do you honestly think he would have cared if his victims told him they were STD-positive?

Instead of taking a look at the violent video games that are conditioning our youth with eye/hand coordination and desensitizing them to death and bloody scenes, some think by taking guns away from law-abiding citizens and giving them “helpful tips” like the ones above will somehow stop the cycle. But until we truly take a look at the drivers of this violent behavior and address them responsibly, the only thing this legislation will do is leave law-abiding citizens open to more attacks by violent, deranged criminals.

I think back to a training session years ago where we were informed that a 14-year-old opened fire with a .22 caliber pistol on a school prayer group in Paducah, KY killing three and injuring five more.

According to my memory of the Sheriff’s office training that day, the youth obtained his proficiency with firearms by playing video games and was eventually allowed to plead guilty due to mental illness. And he obtained the firearm he used by stealing it.

But here is something that always stuck with me about the shooting in Paducah, to know that someone not trained with firearms could fire eight shots rapidly and hit all eight of his moving targets—a level of accuracy many law enforcement officers cannot match—all because he played violent video games.

Theft, violent video games, violent books and mental illness were all discussed during the shooter's trial.

Unfortunately, we have a culture that glorifies violence. As you search for what, if anything, you as members of Congress can do to address this issue, I would like to ask you to take a close look at the research of Lt. Col. Dave Grossman—an Army Ranger and psychology professor who made a comprehensive study of what societal factors promulgate violent crime. His work on digging down to the root of the problem—understanding what motivates people to kill—is an invaluable resource.

Now let's discuss this proposal, S. 150.

Again, as someone with a law enforcement background, I naturally consider whether a legislative proposal made under the banner of public safety would truly contribute to that worthy objective.

Concerning the proposal to ban a wide variety of semi-automatic rifles, shotguns and handguns, and ammunition magazines that hold 11 or more rounds, I think it's an easy question to answer.

First, we know that the firearms that would be banned by this legislation were used in only a small percentage of violent crimes before the federal "assault weapon" ban was imposed in 1994. When Congress approved the 1994 ban, it required that a study of the ban's effectiveness be conducted. That study found that "the banned weapons and magazines were never involved in more than a modest fraction of all gun murders."

The study also said that it was "unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons, those with multiple victims in a single incident and those producing multiple bullet wounds per victim."

Several years later, a follow-up study found that "assault weapons and large capacity magazines were used in only a minority of gun crimes prior to the 1994 federal ban, and assault weapons were used in a particularly small percentage of gun crimes." It also concluded that "assailants fire less than four shots on average, a number well within the 10-round magazine limit imposed by the . . . ban."

Much has been said about pistol magazines that hold more than 10 rounds, but another follow-up study found that "gunshot injury incidents involving pistols were less likely to produce a death than those involving revolvers" and that "the average number of wounds for pistol victims was actually lower than that for revolver victims."

Second, the nation's murder rate, which began declining three years before the ban was imposed in 1994, has continued to decrease since the ban expired in 2004. Murder rates fell to a 48-year low in 2011, by some accounts nearly the lowest point in U.S. history, and it dropped another two-percent in the first half of 2012, according to a preliminary report by the FBI.

This decrease is important to consider in the context of the gun control debate, because it has taken place as the numbers of privately-owned firearms and magazines that gun control supporters want to ban have risen to all-time highs. Ironically, the types of rifles, shotguns, handguns, and ammunition magazines that gun control supporters want banned are the very ones that Americans have been acquiring in the greatest numbers, especially during periods when politicians who have wanted to ban guns for decades have renewed their calls for banning guns.

Furthermore, in 2008, the Supreme Court struck down the District of Columbia's handgun ban, partly based on the fact that handguns are commonly owned by law-abiding people for self-defense. Not only are magazines that hold more than 10 rounds standard equipment for many handguns, firearms that gun control supporters call "assault weapons" and similar magazines that are standard for those firearms are very commonly owned as well.

Third, we can conclude that the new proposed gun and magazine ban would not contribute to public safety because criminals and madmen who are determined to cause the greatest amount of harm, and to do so with firearms, could do just as much harm with firearms and magazines that would not be banned.

Consider the horrible crimes at Virginia Tech University in 2007 and at Columbine High School in 1999. In Virginia Tech, the madman used two handguns, one that used 15-round magazines and one that used 10-round magazines, the latter of which would be legal under the currently proposed ban. The madman fired and emptied 17 magazines. The official report on the crime concluded that a 10-round magazine limit would not have made much difference in the outcome.

At Columbine, the killer who fired the most ammunition did so with a firearm equipped with only 10-round magazines.

Furthermore, it would do well to remember that the 10-round magazine limit of 1994 led to the introduction of handguns that were designed to comply with the ban, but which—again, ironically—were the type of firearm that gun control supporters had most wanted banned since the 1960s. I'm referring to ultra-compact handguns, in this case those just barely large enough to hold 10 rounds of ammunition, as dictated by the 1994 ban.

There is one other important thing that I must consider where the proposed ban is concerned, beyond the question of such a ban's potential to reduce crime.

As a law enforcement professional, I swore an oath to uphold and defend the Constitution of the United States and the Constitution of the State of Florida. Both documents guarantee the right of the people to keep and bear arms for defensive purposes.

Some people question whether Americans “need” a semi-automatic rifle like the AR-15, or a handgun equipped with a 15- or 17-round magazine, to defend them. I believe that no one knows better what a person “needs” than the person herself or himself. It comes as no surprise to me, that the firearms and magazines that gun control supporters want to ban are the very ones that millions of Americans believe are best for the defensive needs.

It’s just a matter of common sense why a person who carries a handgun for self-defense away from home, or who keeps a handgun or a rifle beside his or her bed at night, would want a magazine that holds well more than 10 rounds.

Law enforcement officers face the very same criminals that other Americans do, but law enforcement officers have many circumstantial advantages that other Americans do not enjoy. Law enforcement officers carry multiple magazines on their duty belts, and they are not limited to 10 rounds. Many have rifles or shotguns in their patrol cars. They have radios that they can use to call for back up in an emergency. And they often have advance warning that they are about to encounter a felon.

Other Americans, if attacked by the same kinds of criminals, are often taken by surprise, and they are carrying only the one magazine that is in their firearm. I don’t know anyone who has had to use a firearm for self-defense who has said, after the fact, that they wished that they had not been carrying more than 10 rounds of ammunition.

As an American and as a former law enforcement professional, I oppose the gun-and-magazine-ban legislation that has been proposed. It would infringe on the right of Americans to keep and bear the arms of their choice for defensive and other legitimate purposes, and it would not prevent crimes.

In addition to infringing on the rights of law-abiding gun owners, study after study has shown that the proposed assault weapons ban would have little, if any, impact on violent crime. As I mentioned above, now is not the time for feel-good legislation that gives the appearance of a solution, it is time for real solutions that address the culture of violence that glorifies murder and mayhem, and sound policies that deal with how to prevent the mentally ill from obtaining firearms.



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Hearing on the Assault Weapons Ban of 2013

Statement by

Michael A. Nutter  
Mayor of Philadelphia  
President, The United States Conference of Mayors

Before the

Committee on the Judiciary  
United States Senate

February 27, 2013

Senator Feinstein, members of Committee, I am Michael A. Nutter, Mayor of Philadelphia and President of The United States Conference of Mayors. I am honored to have the opportunity to appear before you today on behalf of the nation's mayors to discuss the importance of passing the Assault Weapons Ban of 2013. While we support several bills being considered by this Committee, we have made passage of the Assault Weapons Ban our top priority and that is the bill I am here to discuss this morning.

Senator Feinstein, we commend you for offering this bill and for your strong commitment to fighting for its passage. When you discussed this bill with the nation's mayors last month at the U.S. Conference of Mayors Winter Meeting, you described yourself as "a former mayor on a mission." Be assured that you have an army of current mayors on a mission standing with you, ready to do what it takes to see this legislation become law.

Senator Feinstein, just as gun violence has been personal for you, it has been personal for me. The first police officer my city lost after I became Mayor was killed with an assault weapon when he responded to a bank robbery in a supermarket on a Saturday morning. A 12-year veteran of the Philadelphia Police Department, Sergeant Stephen Liczbinski was 39 years old. He left a wife and three children. Neither our police officers nor our citizens, and especially our children, should be confronted with these weapons on the streets of our cities, in our schools, in our movie theaters, in our shopping malls, in our places of worship, or in other civilian settings.

Again and again and again, Americans have been stunned by senseless acts of violence involving assault weapons and large-capacity magazines: Columbine (April 1999, 13 murdered), Virginia Tech (April 2007, 32 murdered), Tucson (January 2011, 6 murdered, 12 wounded including one Congresswoman), Aurora (July 2012, 12 murdered), Oak Creek (August 2012, 6 murdered). The December 14 tragedy at Sandy Hook Elementary which killed 20 young children and six educators in Newtown remains incomprehensible to us all. Too many times during the last year, mayors have expressed shock at a mass shooting.

Even more frequently, many of us must cope with the gun violence that occurs on the streets of our cities. Citizens have been killed on Philadelphia's streets by handguns with high capacity magazines as well as by assault rifles. To me and to America's mayors these are weapons of mass destruction and they are destroying our communities, our streets and our families.

The U.S. Conference of Mayors has been calling for sensible gun laws to protect the public for more than 40 years. Our call for a ban on assault weapons dates back to 1991. Mayors and police chiefs from cities of all sizes have worked together in this effort over the years.

#### **Gun Violence in Cities**

We have done that because of the tremendous toll gun violence takes on the American people day in and day out:

- Every year in America more than 100,000 people are shot, and 31,537 of them die, including 11,583 who are murdered.
- Every year, 18,000 children and teens are shot, and 2,829 of them die, including 1,888 who are murdered.

- Every day in America, 282 people are shot and 86 of them die, including 32 who are murdered.
- Every day 50 children and teens are shot and eight of them die, including five who are murdered.<sup>1</sup>

Gun violence disproportionately affects urban areas. Our nation's 50 largest metro areas have 62 center cities, and these cities account for 15 percent of the population, but 39 percent of gun-related murders and 23 percent of total homicides.<sup>2</sup>

Philadelphia, like many major cities, has struggled to control gun violence for years. However, despite our recent success at employing more effective policing techniques, deaths due to gun violence have not fallen. Let me use one set of statistics to illustrate this point:

Last year, the number of shooting victims in Philadelphia was 1,282. This is down considerably from the year before – and was the lowest number since we began tracking shooting victims in the year 2000. However, the number of homicides was up slightly – 331, seven more than the previous year. How are these two statistics possible? The answer is that the homicide victims have more bullets killing them. Or, to put it another way, there are more rounds being fired and more intentional head shots. So despite better policing, when someone in Philadelphia is shot, they are now more likely to die.

I would note that Pennsylvania does not have stringent gun restrictions. When the City of Philadelphia adopted strict gun laws a few years ago, the state supreme court struck those laws down. This is why we need federal legislation. Cities alone cannot reduce gun violence. We are doing everything that we can, but we are still losing the battle thanks to the proliferation of guns in this nation.

Philadelphia's story is not unique. Mayors everywhere struggle with gun violence, using scarce city resources to fight it – resources which we should be using to educate our children, create jobs for our residents, and revitalize our cities.

I have with me this morning a letter originally sent just three days after the Newtown tragedy occurred and now signed by 212 mayors which calls on the President and Congress to take immediate action and make reasonable changes to our gun laws and regulations. Listed first among our recommended changes is enactment of legislation to ban assault weapons and high-capacity magazines, your legislation Senator Feinstein. I ask that you include this letter in the record of this hearing.

#### **The Assault Weapons Ban Does Not Violate the Second Amendment**

Since the shootings in Newtown, the question, "If not now, when?" has been raised often in news media columns, editorials, and other arguments for swift and meaningful action to combat gun violence. And well it should, because it's the right question. For too many in the gun rights

<sup>1</sup> [http://bradycampaign.org/xshare/Facts/Gun\\_Death\\_and\\_Injury\\_Stat\\_Sheet\\_3-Year\\_Average\\_FINAL.pdf](http://bradycampaign.org/xshare/Facts/Gun_Death_and_Injury_Stat_Sheet_3-Year_Average_FINAL.pdf)

<sup>2</sup> <http://www.theatlanticcities.com/neighborhoods/2013/01/growing-divide-urban-gun-violence/4328/>



community, however, the answer to the question is always “never,” and the reason is always the Second Amendment’s protection of the “right to bear arms.”

Harvard University’s Lawrence Tribe, one of the nation’s most respected experts on Constitutional law, told this Committee just a few weeks ago that, after examining the various proposals being considered – including the ban on assault weapons and high-capacity magazines – “I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution’s structural limits either on congressional power or on executive authority.”

### **The 1994 Assault Weapons Ban Worked**

In addition we’ve been told by the gun rights community that the assault weapons ban didn’t work before and it won’t work now. Research shows that the 1994 ban did work and that since it expired the use of assault weapons by criminals has increased:

- A Justice Department study of the 1994 assault weapons ban found that it was responsible for a 6.7 percent decrease in total gun murders, holding all other factors equal. That study also found that “assault weapons are disproportionately involved in murders with multiple victims, multiple wounds per victim, and police officers as victims.”<sup>3</sup>
- An updated assessment of the federal ban found that the use of assault weapons in crime declined by more than two-thirds about nine years after 1994 Assault Weapons Ban took effect.<sup>4</sup>
- A recent study by the Violence Policy Center found that, between 2005 and 2007, one in four law enforcement officers slain in the line of duty was killed with an assault weapon.<sup>5</sup>
- The Police Executive Research Forum reports that 37 percent of police departments reported seeing a noticeable increase in criminals’ use of assault weapons since the ban expired.<sup>6</sup>

### **It’s Time to Pass the Assault Weapons Ban**

Mayors consider protecting the safety of their citizens and their cities their highest responsibility. We know that keeping our cities and our citizens safe requires more than passing sensible gun laws, including the assault weapons ban, but we also know that we cannot keep our cities safe unless we pass such laws. The Assault Weapons Ban of 2013 would:

<sup>3</sup> Jeffrey A. Roth & Christopher S. Koper, “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994,” The Urban Institute (March 1997), available at [http://www.urban.org/UploadedPDF/aw\\_final.pdf](http://www.urban.org/UploadedPDF/aw_final.pdf) (page 2).

<sup>4</sup> Christopher S. Koper, “An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003” (June 2004), available at [http://www.sas.upenn.edu/jerry/lee/research/aw\\_final2004.pdf](http://www.sas.upenn.edu/jerry/lee/research/aw_final2004.pdf) (page 46).

<sup>5</sup> Violence Policy Center, *Target: Law Enforcement—Assault Weapons in the News* (Feb. 2010), <http://www.vpc.org/studies/targetle.pdf> (page 6-7).

<sup>6</sup> Police Executive Research Forum, *Guns and Crime: Breaking New Ground by Focusing on the Local Impact* (May 2010), <http://www.policeforum.org/library/critical-issues-in-policing-series/GunsandCrime.pdf> (page 2).

- Prohibit the sale, manufacture, transfer and importation of 157 of the most commonly-owned military-style assault weapons and ban an additional group of assault weapons that can accept a detachable ammunition magazine and have one or more military characteristics;
- Ban large-capacity magazines and other ammunition feeding devices that hold more than 10 rounds of ammunition – devices which allow shooters to fire numerous rounds in rapid succession without having to stop and reload; and
- Protect the rights of law-abiding citizens who use guns for hunting, household defense or legitimate recreational purposes and exempt all assault weapons lawfully possessed at the date of enactment from the ban.
- Require background checks on all future transfers of assault weapons covered by the legislation, including sale, trade and gift;
- Require that grandfathered assault weapons be stored safely using a secure gun storage or safety device in order to keep them away from prohibited persons; and
- Prohibit the sale or transfer of high-capacity ammunition feeding devices currently in existence.

This is common sense legislation which will help us to reduce the number of people, including police officers, who are shot and killed in our cities and throughout our nation. This legislation deserves a vote. This legislation deserves to be passed, by this Committee, by the Senate, and by the House so that the President can sign it into law.

I know it will take an act of political courage for many Members of Congress to support the Assault Weapons Ban of 2013, but the time for such political courage is now. How many more children, how many more police officers do we have to lose for our elected representatives to do the right thing? The nation's mayors pledge to work with you to build a safer America for our children and all of our citizens.

**Hearing on the Assault Weapons Ban of 2013**

**February 27, 2013**

**Senator Grassley's Questions for Congresswoman Adams**

Congresswoman Adams, we have heard it said today that the 1994 assault weapons ban was an effective way to reduce murders in mass shootings and in other crimes. The U.S. Attorney in the first panel argued that the NIJ found that the ban was effective.

However, the NIJ study found that:

- "Should it be renewed, the ban's effects on gun violence are likely to be small at best and perhaps too small for reliable measurement."

"Assault weapons were rarely used in gun crimes even before the ban."

- "Because the ban has not yet reduced the use of large capacity magazines in crime, we cannot clearly credit the ban with any of the nation's recent drop in gun violence."

- 1) Based on your experience as a law enforcement officer and member of Congress, what is your understanding of this report and the 1994 ban?

- 2) During the gun control debate in Colorado, various state legislators made comments about the needs of women to use assault weapons. Are there ways in which that sort of thinking especially harms a woman's right to defend herself under the Second Amendment?

**Hearing on the Assault Weapons Ban of 2013**

**February 27, 2013**

**Senator Grassley's Questions for Milwaukee Police Chief Edward Flynn**

**Records of Break-Ins Related to ATF**

While the break-in at Fearless Distributing was occurring, a nearby resident says he called the Milwaukee police and reported the incident and then went to the district station and reported it in person. However, Milwaukee police didn't come until the next day.

In February, I sent you a request for the police reports related to this burglary and the earlier SUV break-in.

- Why didn't Milwaukee police respond to the report that a burglary was in progress?
- Will you commit to providing this Committee with those police reports, since it is necessary for us to do our duty under the Constitution to oversee federal law enforcement operations?

**Question from Senator Grassley for Chief Flynn on the Accuracy of Milwaukee Crime Statistics**

Chief Flynn, in your testimony you referenced a lot of numbers, specifically crime statistics reported by your Department. But back in February 2012, you used crime statistics compiled by your Department to make the argument to the public that Milwaukee had seen four straight years of falling crime.

However, Chief Flynn, you knew as early as 2010 that there were problems with those numbers. You suspected that they were misreported. In fact, you were so concerned that those numbers were incorrect that you asked the FBI to audit your Department. Your fears were confirmed in 2012 by two separate audits—one done internally and one by an independent group—that showed those numbers were wrong.

What assurances do we have that the numbers you have referenced in your testimony and answers are reliable?

**Senator Grassley's Questions for Milwaukee Police Chief Edward Flynn on Milwaukee Police Involvement with ATF**

Recent news reports have highlighted an operation by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Milwaukee. The operation involved an undercover storefront called "Fearless Distributing" that ATF opened to attract individuals wanting to sell firearms under the table.

Although in the end 30 individuals were charged, the operation seems to have been plagued with failures, including wrongly-charged defendants, \$15,000 worth of damage being caused to the space ATF leased, and \$35,000 worth of merchandise being stolen from ATF's storefront in a burglary. In a separate incident, thieves also broke into an ATF SUV parked at a coffee shop a half-mile away from the undercover storefront and stole three guns stored inside the car, including an M-4 .223-caliber fully automatic rifle.

Local residents complain that the ATF operation actually brought more crime into a neighborhood where crime had been on the decline.

- Did ATF inform your Department of the presence of this ATF undercover operation at the time? If so, did you provide manpower or other support for the operation?
- Were you personally aware of the operation at the time it was ongoing?

**Hearing on the Assault Weapons Ban of 2013**

**February 27, 2013**

**Senator Grassley's Questions for David Hardy on the Assault Weapons Ban**

Professor Hardy:

- 1) The President has called so-called assault weapons "weapons of war" and the United States Attorney today called them "military-style" weapons. Are they?
- 2) If one were to attempt to ban the most dangerous "weapons of war" as President Obama calls them, wouldn't it make more sense to ban based on the caliber of the weapon and not simply cosmetic features?
- 3) Would a ban based on caliber be constitutional? If not, why not?
- 4) Can you elaborate on your prepared testimony how S. 150 treats differently assault weapon ownership by private citizens and by retired law enforcement and the Second Amendment implications of that distinction?
- 5) Can you discuss why a ban on large capacity magazines would not affect mass killings?



**Hearing on the Assault Weapons Ban of 2013**

**February 27, 2013**

**Senator Grassley's Questions for Professor Johnson on the Assault Weapons Ban and the Second Amendment**

In your testimony, you have stated that you believe that the firearms ban proposed in S. 150 would violate the Second Amendment for a number of reasons.

- Can you explain what the Supreme Court in the Heller case meant by the term "common use" and then explain why the proposed banned list of firearms in S.150 would violate the Second Amendment?
- Do you believe that a ban on an AR-15 semi-automatic rifle would violate the Second Amendment?
- Why do you believe that banning magazines that hold more than 10 rounds of ammunition would violate the Second Amendment?
- Would a national conceal and carry permit pass Constitutional muster?
- Why would a national conceal and carry permit be more effective in making sure firearms end up in safe hands than the firearms ban proposed in S. 150?

## RESPONSES OF HON. SANDY ADAMS TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

## Question 1:

Based on your experience as a law enforcement officer and member of Congress, what is your understanding of this report and the 1994 ban?

As stated in my written testimony, we know that firearms that would be banned by this legislation were used in only a small percentage of violent crime before the federal "assault weapon" ban of 1994 was imposed. When Congress approved the 1994 ban, it required that a study of the ban's effectiveness be conducted. That study found that "the banned weapons and magazines were never involved in more than a modest fraction of all gun murders." It also said that it was "unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons, those with multiple victims in a single incident and those producing multiple bullet wounds per victim."

Several years later, a follow-up study found that "assault weapons and large capacity magazines were used in only a minority of gun crimes prior to the 1994 federal ban, and assault weapons were used in a particularly small percentage of gun crimes." This finding was consistent with a variety of reports from state and local law enforcement agencies, showing that guns branded with the "assault weapon" label had been used in about 1-2 percent of violent crimes.

Violent crime had begun declining in the United States before the ban was imposed, for reasons that have nothing to do with gun control. Nevertheless, the study speculated that the ban might have been associated with a 6.7 percent decrease in gun murders between 1994 and 1995, but said that "with only one year of post-ban data, we cannot rule out the possibility that this decrease reflects chance year-to-year variation rather than a true effect of the ban. Nor can we rule out effects of other features of the 1994 Crime Act or a host of state and local initiatives that took place simultaneously." It concluded that "the evidence is not strong enough for us to conclude that there was any meaningful effect (i.e., that the effect was different from zero)."

While supporters of the ban had also suggested that "assault weapons" had been common in multiple victim shooting incidents, the study said "we found no statistical evidence of post-ban decreases in either the number of victims per gun homicide incident, the number of gunshot wounds per victim, or the proportion of gunshot victims with multiple wounds. Nor did we find assault weapons to be overrepresented in a sample of mass murders involving guns." It additionally said, "We were unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons, those with multiple victims in a single incident and those producing multiple bullet wounds per victim."

There are many reasons why the ban could not have had much, if any, effect on crime rates. First, as noted, the banned firearms were involved in only a small percentage of crimes before the ban. Second, the ban mandated only that certain external attachments that do not determine how a firearm operates be omitted from various newly-manufactured firearms and, while allowing the continued importation of magazines that hold 11 or more rounds, allowed the importation of such magazines that

were foreign-made.

Third, while most firearms labeled as "assault weapons" are rifles, rifles are used in about three percent of murders, piling in comparison to the number committed with knives, bludgeons, and hands and feet.

Fourth, criminals rarely fire more than a few shots in a crime. A follow-up study concluded by one of the authors of the study noted above, concluded that "Specific data on shots fired in gun attacks . . . suggest that relatively few attacks involve more than 10 shots fired. The few available studies on shots fired show that assailants fire less than four shots on average, a number well within the 10-round magazine limit. . . ."

Fifth, whether a homicide occurs in a crime is largely determined by the intent of the perpetrator, rather than the availability of a particular weapon. Furthermore, given that most gun crimes are committed with handguns, and virtually all models of handguns were untouched by the 1994 ban, it is clear that any criminal for any reason not able to acquire a banned firearm and/or a magazine holding more than 10 rounds, would in all or most circumstances be able to complete the same crime with a handgun and one or more magazines holding 10 rounds.

This was demonstrated all too well in the multiple shooting at Virginia Tech. In that crime, the perpetrator used two handguns, one of which was designed to use 10-round magazines (for reasons unrelated to the 1994 ban). The official report on the crime concluded that a 10-round magazine limit would not have made much difference in the outcome. More important than the type of firearm or magazine that the perpetrator used, was the fact that he faced virtually no resistance.

As noted, violent crime decreased in the 1990s and has continued to decrease to the present. Reasons for the decrease are many. In the 1990s, many states adopted criminal justice reforms which decreased probation and parole, and instead increased incarceration and extended prison sentences for the most violent offenders, many of whom would otherwise have continued to commit crimes. The economy improved during the 1990s, the crack cocaine trade and its associated violence subsided, and law enforcement agencies adopted new programs that put their strength where it was most needed. Violent crime continued to decrease as the number of privately owned firearms in the United States soared, year after year, particularly among the very types of firearms that gun control supporters have argued the most strenuously for banning: handguns and semi-automatic rifles. Today, the number of such firearms is at an all-time and rapidly increasing high, and the nation's murder rate is at a nearly all-time low.

Plainly stated, as a former law enforcement officer and member of Congress I believe what actually had an effect on the violent crime is and was the enactment and enforcement of laws such as Florida enacted 10-20-Life and Stop Turning Out Prisoners (STOP). Both laws require criminals to serve the majority of their crime and if a gun is used during the commission of a crime the criminal could face life in prison. Removing the criminal from the streets is the only way to ensure they won't commit another violent crime.

I encourage Congress to recognize its limited ability to affect crime rates at the local level. Crime is not the result of someone having a semi-automatic firearm instead of some other kind, or of having an 11 round magazine instead of one that holds 10 rounds. Crime is the result of an absence of morality and respect for the rights of other people—things that are entirely beyond Congress’ purview. Pretending otherwise, so as to impose a broad gun control agenda that gun control supporters have held for many years, the components of which do not relate to the kind of crime that their advocates claim they are trying to prevent, but which instead would limit the ability of good Americans to keep and bear arms for defensive and other legitimate purposes, cannot be reconciled with elected representatives’ oath of office.

Question 2:

During the gun control debate in Colorado, various state legislators made comments about the needs of women to use assault weapons. Are there ways in which that sort of thinking especially harms a woman’s right to defend herself under the Second Amendment?

The assertion by gun control supporters, that women are unable to use firearms for self-defense was disproven by the landmark Kleck-Gertz study of defensive gun use, which determined that of over two million such uses annually in the early 1990s, 46.3 percent were by women. It is repeatedly disproven by the stream of news stories, giving accounts of women successfully using guns for self-defense across the country. And it is further disproven by the success that women have had as law enforcement professionals and as members of our Armed Forces. In its decision in *District of Columbia v. Heller* (2008), the Supreme Court of the United States declared that throughout our nation’s history, “the inherent right of self-defense has been central to the Second Amendment right.”

Over the last several decades, gun control supporters have gone to their greatest lengths to undermine the right and the ability of people to use guns for self-defense. This is evident in their unsuccessful attempts to convince the public, elected representatives, and the Supreme Court that the right to arms belonged only to persons serving in a government capacity, and their unsuccessful attempts to convince the public and elected officials to oppose Right-to-Carry laws, now in effect in 41 states.

It is also evident in their attempts to convince the public and legislators to go along with banning the types of firearms, ammunition, and magazines that are most useful for self-defense, at first including handguns and hollow-point ammunition, and now including semi-automatic rifles or semi-automatic firearms generally, and sometimes even pump-action firearms, along with magazines that hold 11 or more rounds, which are standard equipment in the vast majority of firearms that are designed for defensive use.

Semi-automatic shotguns and detachable-magazine semi-automatic rifles are exceptionally well-suited for home defense, generally offering reduced recoil, making it easier to accomplish repeat shots, which very often are necessary in a defensive situation.

While handguns are overwhelmingly the type of firearm preferred by the American people to be carried for self-defense away from home, many people prefer a shotgun or rifle for protection at home, finding them easier to hold in a stable manner, and easier to handle during the recoil associated with firing a shot.

Prohibiting all semi-automatic shotguns and detachable-magazine semi-automatic rifles, except for a handful exempted by name, as proposed in S. 150, would significantly impact the ability of many people to defend themselves at home and would undermine core purposes of the Second Amendment, which, as the Supreme Court noted in *Heller*, include suppressing insurrections and resisting tyranny.

As a law enforcement professional with 17 years experience, it is clear to me that a majority of police officers and sheriff's deputies who patrol our communities carry multiple magazines holding 11 or more rounds. Law enforcement officers also often carry other firearms in their patrol cars, they wear bullet-resistant vests, they often are aware that a person that they are approaching has a criminal record, they generally control how they approach a suspect, and they can request additional officers to assist them.

A private citizen walking in a parking lot with a legally carried firearm for protection, or sleeping with a firearm on the nightstand, would likely have to rely on the single magazine that is in his or her firearm, when dealing with the same criminals that law enforcement officers face. No law enforcement officer that I have ever known would limit himself or herself in the number of rounds to carry, and no private citizen should be arbitrarily limited in that way, just to appease people who are ideologically opposed to the ownership of firearms.

The importance of having more than 10 rounds available for self-defense is evident in the percentage of violent crimes that involve multiple attackers. In the Kleck-Gertz survey, 52.8 percent of encounters with criminals were in incidents involving multiple criminals, and 26.6 percent of encounters involved three or more criminals. Law enforcement officers often miss their shots when using a gun in self-defense, and it is common for criminals to continue their attacks even when struck by defenders' bullets.

As a woman who has faced an attacker in both my personal and professional life, I do not believe it is safe or productive to tell a woman what means she can use to defend herself. She should be encouraged to obtain training in whatever manner she believes would be the best for her to defend herself and/or her family.

Instead of focusing on the criminals who attack these women, some in the Colorado State Legislature focused on the rights of a woman to defend herself and her family. This discussion is very disturbing. Women have the right to defend themselves and/or their family and should have the right to choose any means to do so without the fear of persecution.

All of these factors argue for rejection of any proposal to deny to private citizens the kinds of

ammunition magazines that law enforcement officers depend on for their lives.



**BE A FORCE**

March 19, 2013

Senator Patrick Leahy  
437 Russell Senate Building  
United States Senate  
Washington, D.C. 20510

Milwaukee Police Department  
Police Administration Building  
749 West State Street  
Milwaukee, Wisconsin 53233  
<http://www.milwaukee.gov/police>

Edward A. Flynn  
Chief of Police

(414) 935-7200

Dear Senator Leahy:

You sent several questions subsequent to the February 27, 2013, Senate Committee on the Judiciary hearing at which I testified regarding S. 150 (regulating assault weapons). The questions cover a variety of topics. For ease of answering, I have numbered the original questions, included the text of the original questions, and provided a numbered, italicized response to each question below.

**Senator Grassley's Questions for Milwaukee Police Chief Edward Flynn on Records of Break-Ins Related to ATF.**

While the break-in at Fearless Distributing was occurring, a nearby resident says he called the Milwaukee police and reported the incident and then went to the district station and reported it in person. However, Milwaukee police didn't come until the next day.

In February, I sent you a request for the police reports related to this burglary and the earlier SUV break-in.

Question 1: Why didn't Milwaukee police respond to the report that a burglary was in progress?

Answer 1: *The Milwaukee Police Department initially received information regarding a suspicious vehicle in the general area and did not have information to indicate that a crime occurred or was about to occur. Officers responded to the area but found no sign of the suspicious vehicle. The following day, ATF agents went to the store and discovered that a burglary had taken place. The Milwaukee Police Department responded immediately, conducted a thorough investigation, and made several arrests.*

Question 2: Will you commit to providing this Committee with those police reports, since it is necessary for us to do our duty under the Constitution to oversee federal law enforcement operations?

IN SOME JOBS, SUCCESS IS MEASURED BY WHAT DOESN'T HAPPEN.

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*Answer 2: The Milwaukee Police Department's Open Records Section has received Senator Grassley's request for public documents related to the ATF operation and our agency is in the process of fulfilling that request.*

**Senator Grassley's Questions for Milwaukee Police Chief Edward Flynn on Milwaukee Police Involvement with ATF.**

Recent news reports have highlighted an operation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in Milwaukee. The operation involved an undercover storefront called "Fearless Distributing" that ATF opened to attract individuals wanting to sell firearms under the table.

Although in the end thirty (30) individuals were charged, the operation seems to have been plagued with failures, including wrongly-charged defendants, \$15,000 worth of damage being caused to the space ATF leased, and \$35,000 worth of merchandise being stolen from ATF's storefront in a burglary. In a separate incident, thieves also broke into an ATF SUV parked at a coffee shop a half-mile away from the undercover storefront and stole three guns stored inside the car, including an M-4 .223-caliber fully automatic rifle.

Local residents complain that the ATF operation actually brought more crime into a neighborhood where crime had been on the decline.

Question 3: Did ATF inform your Department of the presence of this ATF undercover operation at the time? If so, did you provide manpower or other support for the operation?

*Answer 3: The Milwaukee Police Department works collaboratively with our federal law enforcement partners, including the ATF, and we did have two Milwaukee officers assigned to the local ATF task force. Those Milwaukee officers worked with the ATF agents on this operation, but were in support positions and were not acting in an undercover capacity.*

Question 4: Were you personally aware of the operation at the time it was ongoing?

*Answer 4: The operation began in February 2012, and at that time an Assistant Chief of the Milwaukee Police Department was briefed on the general concept. Due to the sensitive nature of the operation, most members of the Milwaukee Police Department and many ATF agents assigned to the Milwaukee office were not aware of the initiative. On August 18<sup>th</sup>, 2012, I received a formal briefing on this operation with the ATF.*



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**Senator Grassley's Question for Milwaukee Police Chief Edward Flynn on the Accuracy of Milwaukee Crime Statistics.**

Chief Flynn, in your testimony you referenced a lot of numbers, specifically crime statistics reported by your Department. But back in February 2012, you used crime statistics compiled by your Department to make the argument to the public that Milwaukee had seen four straight years of falling crime.

However, Chief Flynn, you knew as early as 2010 that there were problems with those numbers. You suspected that they were misreported. In fact, you were so concerned that those numbers were incorrect that you asked the FBI to audit your Department. Your fears were confirmed in 2012 by two separate audits—one done internally and one by an independent group—that showed those numbers were wrong.

Question 5: What assurances do we have that the numbers you have referenced in your testimony and answers are reliable?

Answer 5: *Milwaukee is the 28th largest city in America, has the 17<sup>th</sup> largest police force and ranks 4th highest among major cities in terms of poverty. These factors, along with the difficult social and economic issues that arise, can create many challenges for the police professional. Crime prevention, crime control, crime response, and crime reporting are at the top of that long list.*

*The Milwaukee Police Department currently handles over 240,000 calls for service each year and investigates approximately 63,000 crimes. While those numbers are reduced from previous years due to a more focused and nimble policing strategy, the sheer volume of service calls and crime reports still poses problems with respect to data management. Those problems have existed for years.*

*In the late 1990's, Milwaukee began to consider changes to its obsolete data management systems and in 2001 a request for proposals was released. Eventually, the Milwaukee Police Department chose to purchase a new computer aided dispatch system along with the department's first electronic records management system, and in late 2002, a contract was signed with Tiburon, a subsidiary of CompuDyne Public Safety & Justice Inc., at a cost of \$7.3 million.*

*In 2005, after many months of problem solving, the four integrated subsystems, computer aided dispatch (CAD), corrections management system (CMS), automated reporting system*

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*(ARS), and records management system (RMS) were made operational. The Milwaukee Police Department encountered significant problems with implementation of this crime data system and those problems resulted in a delay in reporting WIBRS crime data to the State.*

*Consequently, in early 2007, the Milwaukee Common Council ordered an audit of the system by the City's Comptroller. That audit was conducted in mid 2007 and it determined that the core functions were implemented, but important system functions were still creating problems, were not operational, or were underutilized.*

*In January 2008, I became Milwaukee's Police Chief and quickly held a meeting with local leaders, public and private, to request assistance in improving the performance of the department's information systems. Many modifications were made over the past four years, at a cost of over \$269,000, yet the functionality of the Tiburon System continued to be a significant issue and the agency continued to push for progress through numerous meetings with the vendor. Service requests at times went unanswered and at other times failed to mitigate the various issues that were identified.*

*In September 2011, I directed the formation of a Steering Committee to assess the current system and determine the best course of action. In May 2012, a request for information was developed and the City of Milwaukee is currently reviewing vendor submissions to potentially settle on a new data management system. Funds are being budgeted for this likely scenario.*

*To date, few major cities have chosen the Tiburon System and the larger agencies that have utilized this system have experienced similar data quality issues. For example, Kansas City, Missouri purchased the Tiburon System and was later found to have significant reporting problems as a consequence. During the past four years, that agency overhauled its training program to compensate for this insufficiency and the error rate within that agency has been greatly reduced.*

*The Milwaukee Police Department reports crime statistics under the National Incident Based Reporting System (IBRS) guidelines and was one of the earliest major cities to do so.*

*The FBI recognizes the existence of error in this reporting process and has established procedures designed to improve data quality within the various agencies. The FBI improvement procedures include a random quality assurance review (QAR) or audit of agencies.*

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*In 2011, I made inquiries and determined that the Milwaukee Police Department had never received an FBI quality assurance review. Consequently, I requested that audit and in May 2012, the FBI conducted the QAR. The results showed a 3% error rate in Group A offenses, which include Part 1 Crimes. That error rate is within the acceptable range as determined by FBI standards. The report also showed a higher error rate in Group B (lower level) offenses, but that error rate was the direct result of system deficiencies in the conversion of data involving ordinance violations.*

*In May 2012, our agency conducted its own detailed but targeted audit of the assault crime category after a sample review identified accuracy issues. An audit team electronically reviewed our more than 34,000 simple battery, child abuse, and other assault cases between 2006 and 2012. Based on key fields of data, the crime category was filtered and the audit team visually inspected approximately 11,000 reports.*

*The audit revealed that the department has under-reported aggravated assaults; however, that specific reporting problem has existed since 2005 when the current data system was implemented. It should be noted that this type of classification error existed prior to my appointment and the error rate for aggravated assaults has decreased during my tenure.*

*The Milwaukee audit team has identified three key areas of concern, namely an inadequate data management system, insufficient training for users, and limited quality controls within the Records Division.*

*The review identified a significant deficiency within the records management system that created opportunities for some of the reporting errors to go unnoticed. This deficiency resulted in a high number of classification errors in certain crime categories. A specific modification to the data system has been requested through our vendor and that modification will greatly reduce the rate of classification error.*

*In addition to the FBI audit and the internal audit conducted by our agency, the Milwaukee Fire and Police Commission entered into a contract with PRI, an independent auditing firm, to conduct a comprehensive review of the processes within the Milwaukee Police Department. That auditor performed an attestation audit and reported the results to the Fire*

Senator Leahy  
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*and Police Commission in December 2012. The independent auditor concluded that the system and process deficiencies within the organization had been corrected and the assault category records for current and previous years were accurate.*

*After adjusting crime statistics based on the audit results, we find that Milwaukee's violent crime has declined in essentially the same manner as was initially reported to the FBI in aggravated assaults between 2006 and 2011, and a 23.9% reduction in overall violent crime during that same period.*

Please feel free to contact me at 414-935-7200 if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward A. Flynn". The signature is fluid and cursive, with a long horizontal stroke at the end.

EDWARD A. FLYNN  
CHIEF OF POLICE

**Hearing on the Assault Weapons Ban of 2013**

**February 27, 2013**

**Senator Grassley's Questions for David Hardy on the Assault Weapons Ban**

Mr. Hardy:

- 1) The President has called so-called assault weapons "weapons of war" and the United States Attorney today called them "military-style" weapons. Are they?

Answer: they are definitely not "weapons of war." No one would go to war with a semiautomatic AR-15; they'd use a full automatic firearm. The Department of Homeland Security recently issued a request for proposals seeking 7,000 AR-15s (or firearms closely matching them), and it called them "Personal Defense Weapons."

It is strange that people those who describe these as "weapons of war," still want police to be issued them. Why would police need "weapons of war"? The purpose of a police firearm is the same as that of a "civilian" arm; to enable the user to protect against criminal attack.

They may justly be termed military "style" firearms in that they *look like* military issue firearms. I cannot see how looks matter, particularly when a constitutional protection is involved.

- 2) If one were to attempt to ban the most dangerous "weapons of war" as President Obama calls them, wouldn't it make more sense to ban based on the caliber of the weapon and not simply cosmetic features?

Answer: The power of the firearm (usually expressed in foot-pounds of energy at the muzzle) would be a better distinction than caliber (which is the diameter of the bullet). A .243 is considerably more powerful than a .45 ACP, for instance.

If the power of the firearm were the criterion, then all so-called assault rifles would likely pass muster, since they have about half the power of a WWII rifle. Many hunting rifles would fail, however: hunters are the primary users of the more powerful cartridges, such as the .300 Winchester Magnum and the .338 Winchester Magnum; the latter has *three times* the energy of the AR-15's round.

I would agree that banning rifles based on outward appearance makes no sense at all. There are two features of S. 150 to which I would draw special attention. One of the banned features is "A threaded barrel." (p. 3, l. 6). *Virtually all rifles have a threaded barrel.* The breech end of the barrel is threaded so that it can be screwed into the receiver. S. 150 draws no distinction between a barrel threaded at the breech and one threaded at the muzzle.

Another banned feature is "A pistol grip." (p.2, l. 24). *All semiautomatic rifles produced in the last century have a pistol grip* (see my written testimony for images). The Remington Model 8, a semiautomatic hunting rifle that entered production in 1908, has such a grip, and all other semiautomatic rifles made since then have had it too, I believe, as have most civilian bolt action rifles. As drafted, S. 150 would ban, as supposed "assault rifles," all semiautomatic rifles with detachable magazines. This would include even the Ruger 10-22, a popular .22 rimfire rifle, with detachable magazine and pistol grip.

S. 150 is thus seriously flawed and will ban firearms that I think even its drafters would have not wanted to ban. .22 rimfires are hardly "assault rifles."

- 3) Would a ban based on caliber be constitutional? If not, why not?

Answer: Any ban based on caliber or muzzle energy would be unconstitutional in my view. It would ban large categories of firearms that are rarely, if ever, used in crime. Any line drawn would of necessity be arbitrary. Is 2,000 foot-pounds of energy too much? Most deer rifles (at least here in the Southwest) generate more than that, as do the longer-ranged varmint rifles.

- 4) Can you elaborate on your prepared testimony how S. 150 treats differently assault weapon ownership by private citizens and by retired law enforcement and the Second Amendment implications of that distinction?

Answer: To give retired law enforcement officials an exemption from the law draws a completely arbitrary distinction between two classes of now private citizens, with regard to exercise of constitutional rights. The only rationale I can see for it is that of satisfying police chiefs who espouse this legislation – but only if it will not apply to them, even after they step down from their duties. I do not think drawing a distinction on such a basis can withstand constitutional muster.

Moreover, a friend who is a psychiatrist, and has done disability assessments, points out that when an officer has psychiatric issues so overwhelming that he or she cannot do their job, they are given a disability retirement. S. 150 would thus restrict

firearms ownership by ordinary citizens, while not restricting firearms ownership by former LEOs with proven and serious mental conditions.

I note that it has been proposed to give military veterans an exemption from the ban, and objection was made that those veterans might have PTSD. It is hard to justify restricting retired military on the mere *chance* that they *might* have psychiatric issues while not restricting retired LEOs who have been *proven* to have serious psychiatric problems.

- 5) Can you discuss why a ban on large capacity magazines would not affect mass killings?

Answer: The typical mass killer is both evil and calculating, and in the majority of cases carries more than one gun. At Columbine, the killers carried two shotguns, a carbine, a pistol, and bombs. At the Aurora theater, the killer carried a shotgun, a rifle and two pistols. At Newtown, the killer had two pistols and a rifle, plus a shotgun in his car. In situations like these, the killer does not have to switch magazines, he simply switches guns. With police response time typically 10-20 minutes, he has plenty of time to switch guns or reload, and the magazine size simply does not matter.



## “Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

I am writing to let you know that I support SB 105, Senator Feinstein's bill to ban assault weapons and high capacity magazine bans.

Even further, I believe that armor piercing bullets should be banned. I believe that military style weapons should only be for the military and police. I believe that everyone should undergo a background check and training before purchasing any weapon. I believe that guns should be registered and gun owners should be responsible for their safe keeping. If a gun is stolen and not reported I believe they should be held responsible.

I am a dog trainer and there are many laws in place as to how I keep a dog that the law deems "dangerous". If the dog escapes and kills someone then I can be charged with manslaughter. Surely if I am required to keep a living animal properly contained then gun owners can keep their weapons secured or be held responsible.

I grew up in WV with guns all around me. I believe that everyone that is mentally capable and is a law abiding citizen should be able to own guns. I live in Newtown now and on Christmas of this past year, just days after the massacre at Sandy Hook, my brother gave my father an assault rifle. There are a few things that bothered me- my father does not own a safe for his guns and my mother is bipolar. These are very smart, successful people but there seems to be no common sense when it comes to guns. They are completely disconnected to the horrors that I have heard. They believe that nothing like that will happen to them. They are ignorant in this regard and they need to be educated to the danger that they put everyone in.

Thank you for taking the time to hear my voice.

Abby Hill CPDT  
The Exceptional Pet LLC  
[www.theexceptionalpct.com](http://www.theexceptionalpct.com)  
203-994-7678

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

Dear Senators,

I am a resident of Sandy Hook, Connecticut, and the mother of two young boys. In two years, I will put my older son on the bus for his first day of kindergarten at Sandy Hook Elementary. I'm writing today in support of SB 150, the Assault Weapons Ban of 2013.

Over the past two months, I have brought meals to neighbors who have lost children, and wept with friends who have had to tell their six-year-olds that five of their young friends had died. I have seen surviving Sandy Hook students cling desperately to their parents, to their dolls, to their dogs. I have watched parents of surviving Sandy Hook students withdraw from their support systems. I have seen my own son, who just turned three, develop a sudden fear of monsters. The effects of this shooting, even in a community as supportive and loving as Newtown, will be with all of us forever.

In the time it took Adam Lanza to reload, children were able to escape. While it is unrealistic to think that we can stop every incidence of gun violence in this country, we have a moral obligation to do what we can to reduce the unacceptably high rate of gun-related deaths every year. A weapon that can put eleven bullets in a six-year-old in a matter of seconds has no place on our streets or in our communities.

The children of our country deserve better. Please be brave, and do the right thing.

With respect,

Aimee Pokwatka

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

To Whom It May Concern:

I was raised in the beautiful town of Newtown, CT. As you well know, my hometown was struck by an extraordinary act of violence. This horrific event has changed my town forever and has impacted all of us who call Newtown our home. Although I am writing to you as someone who has been affected by gun violence, I am hoping to get across that public health and medical investigation shows that assault weapons cause more harm than good. As someone who will enter a master's in public health program in a few months, I have focused my energy since the tragedy on delving into public health and medical journals.

One of the most compelling articles I have read was written by representatives of the American Academy of Pediatrics. The article, published in the New England Journal of Medicine, discusses the public health issue that is gun deaths among children. According to the article, Gun-related injuries accounted for 6,570 deaths in children and young people (ages 1 to 24) in 2010. The death of over 6,500 children in a single year is extremely problematic. America can do better to protect our children. The article also stated that less than 5% of suicide attempts involving drugs are lethal while 90% of those involving guns result in death. This clearly shows that having a gun makes a suicide attempt more likely to be fatal. While these statistics do not specifically separate assault weapons from other firearms, the American Academy of Pediatrics offers several measures that should be taken to reduce gun deaths among children and one of these recommendations is a federal ban on assault weapons. Pediatricians do not have political agendas, but rather are seeking to protect the young lives of our nation. Their recommendations should be taken into consideration.

Another interesting article published in the Public Library of Science Medicine journal discusses the possibility of being able to determine whether or not a person will become violent based on whether or not the individual has a diagnosis of schizophrenia or other psychoses. The article was interesting to me because the argument that we should simply prevent the mentally ill from getting weapons rather than banning them is often used. While this is complicated for other reasons, such as that all states report mental illness differently, the article stated that the risk of homicide in persons with schizophrenia was shown to be 0.3% compared with 0.02% in the general population. This data suggests that it is nearly impossible to determine whether or not someone with mental illness will become violent. Simply preventing the mentally ill from acquiring guns will likely not be effective enough. If we can prevent civilians from having military-grade firearms it will be more likely that someone who wishes to commit a violent act will have difficulty in acquiring a gun made for killing many people at once. I urge you to explore the research on gun violence. The research conducted by physicians and public health professionals overwhelmingly supports an assault weapons ban as well as many other violence prevention measures. Please support the assault weapons ban. The people of Newtown and all other American citizens affected by gun violence deserve your support. No other town should ever have to experience the pain that Newtown is feeling right now. Anything that can help prevent mass shootings from taking away innocent lives should be done. Thanks for your time and consideration.

Sincerely,  
Alexandra Clement

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

I am a resident of Newtown, Connecticut, and a former intern at Sandy Hook Elementary School.

Newtown has brought my life so much love and opportunity, for which I will always be grateful. The events that transpired last Friday morning I likely will never fully grasp or understand. As my heart begins to heal, I wanted to share my story in hopes that it will encourage others to help foster change in the coming days, weeks, and years.

With my family, I moved to Newtown when I was six years old – the same age as so many of the children lost in the Sandy Hook shooting. I quickly became acquainted with my new teachers and made new friends, joined dance classes and softball teams, and became part of the town. I watched parades down Main Street on Labor Day, enjoyed signature “Flagpole” sandwiches at the old-fashioned general store, enjoyed the flickering luminaries that line the Ram’s Pasture and Main Street before the Christmas Tree Lighting, and entered raffles for trees at the annual Festival of the Trees (I still haven’t won). While so many of us here go far away for college, I find that many of us come back here to settle. There’s a strong reason for that – our community.

I attended Sacred Heart University and earned a degree in psychology and my elementary school teacher certification. As I neared graduation, I interned at a nearby preschool and completed my student teaching. Following graduation, I was fortunate to become a paid intern at Sandy Hook Elementary School, where the staff was always so gracious, welcoming, and generous. My year of teaching and assisting special needs children helped shape me as a person and future teacher. I worked alongside so many of the heroic staff that saved lives and gave their own. Vicki Soto and I, both then 23 years of age and fresh from school, were interns that year. We learned from the Sandy Hook teachers and began to develop our teaching styles, inspired by the talented educators around us.

As my internship at Sandy Hook was nearing completion, a life dream of mine came true – I was offered a position with a dance company that would take me across this globe. The staff and students shared their excitement at my opportunity, knowing how much it meant to me.

Since those days in 2009, I’ve traveled the world dancing, visiting over 25 countries and 45 of the 50 states in this country – and met my fiancé from Australia in the process. I was so proud to bring him home to Newtown. Despite all the amazing cultures and places we’d experienced, I felt confident Newtown would be our future home. He agreed.

Hearing the initial news of a possible shooting near Sandy Hook Elementary, I felt empty and in disbelief. At that point, all that was reported was that there’d been a police call about a shooting. I prayed it would be a false alarm. But as the hours passed, we painfully learned otherwise.

As I learn about the courageous and selfless actions of Vicki Soto and the other educators at Sandy Hook Elementary, I can't help but picture myself in that classroom, knowing that but for a twist of fate I might have taken the same career path. Could I have possibly been so brave? Vicki is, and forever will be, a hero and an inspiration to me and hopefully to us all.

I ask myself, how could this tragedy happen? But I guess what we really should be asking is, what could have been done to prevent it? How can we prevent it from ever happening again?

Some will talk of providing principals and administrators access to guns for protection. But surely if the schools of our youngest children, our precious future, need to become armed fortresses, we have lost our way as a culture and a country. I respect the rights of citizens to own guns for sport and other legitimate purposes. But our neighborhoods, our communities, our malls, our theaters, our schools are no place for the likes of assault weapons and high-capacity ammunition clips that, in the wrong hands, are for all intents and purposes weapons of mass destruction.

During the vigil here in Newtown, our President said, "If there's even one step we can take to save another child or another parent or another town from the grief that's visited Tucson and Aurora and Oak Creek and Newtown and communities from Columbine to Blacksburg before that, then surely we have an obligation to try." He vowed that "these tragedies must end. And to end them, we must change." He will need your support and he has mine. We have no more time to waste. We must change for those lost at Sandy Hook, for the town of Newtown, for our country, for our children. We must protect our nation's people with the same courageousness and selflessness that the staff of Sandy Hook Elementary School showed for their own. I fully support Senator Feinstein's bill to ban assault weapons as well as high capacity magazine bans. I deserve a vote. Newtown deserves a vote.

Sincerely,

Christina Dolzall

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

Dear Members of the Senate Judiciary Committee,

Senator Feinstein has for more than 20 years been burdened with the pain of gun related tragedy –one that we only recently experienced with such magnitude in Newtown. She has worked tirelessly to carry this torch and keep this issue as part of the dialog of our country’s leaders and we owe her a debt of gratitude for her efforts. We travelled a long way to Washington D.C. last week to support S-150 the Assault Weapons and High Capacity Magazine bill, and the other proposals from lawmakers who are on the right side of history to stand up for ideas that will reduce gun violence, and we will persist until there is a vote

The Newtown Action Alliance has sent representatives to D.C. to demonstrate to all our elected officials that we stand by them and anyone else who is committed to bring reasonable ideas forward to reduce gun violence and death.

We know that there are many elements that we can expect our government to address with stronger legislation, and many others we need to address as a community. We are here with community interfaith leaders, teachers, students, mothers, fathers, and others willing to work within our communities to make us safer. However we also need our lawmakers, at a national level, to ensure our efforts are not undermined by inconsistent laws between states.

As individual citizens, every person in our organization and the hundreds behind each of us have been compelled by the Newtown tragedy to take action, because our conscience will not allow otherwise. It is no longer a choice for us. We expect our elected representatives to be obligated by oath and conscience to take action, and not consider inaction as a viable option. There is so much that can be done without infringing upon the second amendment, and every day of inaction directly equates to lives lost.

Newtown Action Alliance is a Newtown based grassroots organization that takes action and lends support to any reasonable measures to reduce gun violence and death while respecting the rights granted by the Second Amendment.

Newtown has been forever changed by the senseless killing on December 14, 2012. Almost 2500 others have died since December 14th. We all deserve a vote on sensible legislation to protect our precious children and citizens in our towns and cities across this nation.

On behalf of Newtown Action Alliance,  
Dave Ackert  
Chairman  
Newtown Action Alliance

**Subject: Testimony to support S-150, the Assault Weapons and High Capacity Magazine Bill**

Dear Members of the Senate Judiciary Committee:

"History says don't hope on this side of the grave. But then once in a life time, the longed for tidal wave of justice can rise up, and hope and history rhyme. "

These lines were written by the Irish Nobel Prize winning poet Seamus Heaney. He based his play in which these lines are found, on a Greek drama about the all-too-true conflicts that can arise between political expediency and personal integrity. Those conflicts are evident today in the debate over guns in this country. Do we act with political expediency and give our citizens virtually unregulated permission to own guns, even high powered assault weapons; or do we honor our personal moral beliefs that include the rights of children to grow up, and adults to live in a world that is safe and as free as possible from gun violence? And maybe even, do we allow money from the NRA to influence our votes, a politically expedient move, indeed; or do we weep with those who have lost loved ones to gun violence and promise to do our best to stop it?

Yes, these are the tensions in our nation, in our world--the tensions between political expediency and personal integrity. However, we believe that this latest tragedy at Newtown has caused that long awaited "tidal wave of justice," at least in the area of gun violence. Perhaps now hope, hope in a future more free of violence, and history, this historic pivotal moment, can finally rhyme. Now, with this latest tragedy, we see an opportunity to change our laws so that gun owners bear some responsibility for their right to own hand guns and rifles; and an opportunity to ban assault weapons, which can have no good purpose in the hands of ordinary citizens.

We are a group of citizens living in Charlottesville, Virginia. We are asking you to support S-150, the Assault Weapons and High Capacity Magazine bill, and the other proposals from lawmakers that will reduce gun violence in our country. We are pastors, teachers, Christian educators, professors, tax payers, parents, grandparents and moral activists all. Please make sure that THIS time hope and history rhyme.  
Yours,

The Rev. Dr. Gay Lee Einstein  
The Rev. Tina Cox  
Bob West  
Howard Miller  
The Rev. Dale Dealtrey  
Dr. Philip Shane, CPA  
Linda Gehle

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

Dear Mr. Thessin,

I am writing to you in support of common sense gun reform legislation. I'm just an ordinary, voting Mom/housewife from Raleigh, NC. I am an ordinary Mom that was shaken to her very core when I watched the events of 12/14 unfolding on my television.

David Wheeler, Dad of Ben Wheeler, has asked parents to imagine what they are going through. He's asked for other parents to imagine their profound loss, shock, horror. I have, I do. I imagine it every day. When I drop my kids off at school, I can't escape the thought that 12/14 can happen in my town. I can't escape the thought that this could be my very last moment with my children. Things like this never crossed my mind before 12/14. Things like that are what nightmares are made of, but this nightmare came true. This nightmare can happen again if common sense laws are not passed.

I want background checks for all gun buyers. I want the gun show loop holes closed in ALL states. I want a ban on all "assault type" weapons. I want a ban on magazines over 10 rounds.

Newtown is all of our towns. We need to do everything in our power to make sure 12/14 NEVER happens again.

Thank you for your time,

Jenny Newbrough  
Raleigh, NC



Jim Tromater, Organizer,  
Richmond Community Committee Against Gun Violence

The Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Human Rights  
Chairman Dick Durbin

March 6, 2013

Dear Senate Judiciary Committee Members:

Thank you for allowing us the opportunity to submit testimony in support of Senator Diane Feinstein's Assault Weapons Ban of 2013 Bill, S150. As the organizer of the Richmond Community Committee to Stop Gun Violence, I am speaking on behalf of all of our members. We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights. We formed in the wake of Sandy Hook, as a grass-roots organization committed to preventing gun violence. All of our members are parents; many are grandparents. We are regular folk, including gun owners and sport shooting enthusiasts. We cannot countenance explaining to our children and grandchildren that in the face of mass slaughter of 6 year olds, our country did nothing to protect their precious right to life, thus we urge you to act and view inaction in the face of gun manufacturing lobbying as unconscionable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine.

Today we write urging you to renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. In addition, during the 1994 Assault Weapons Ban, these weapons were declining as a percentage of crime guns in Virginia (one of the few states where such data is available). Since the expiration of the 1994 Assault Weapons ban, the percentage of assault weapons used in crimes has predictably once again sky rocketed to pre-ban previous levels, indicating we have once again given criminals and drug dealers easy access to weapons of mass terror and death. These are reasons enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted

with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives, it will lessen the ease with which a deranged individual can visit the terror and horror of the knowledge of easy mass murder of children upon all the children of our country. We have allowed our children to be terrorized for long enough, now is the time to act.

Most Respectfully,

Jim Tromater  
Organizer  
Richmond Community Committee Against Gun Violence

"Hearing on the Assault Weapons Ban of 2013"

February 27, 2013

Subject: Gun Legislation Testimony  
Testimony of Lisa M. Fryer, M.S. SLP-CCC  
March 5, 2013

Dear Senators and Representatives,

My name is Lisa Fryer and I am a resident of Ridgefield, CT. I am writing to **urge you to PASS the legislative proposals submitted by Connecticut Against Gun Violence**. Encompassed is a comprehensive package of gun violence prevention measures that will make our children safer and rid our nation of assault weapons and high capacity magazines.

I am a Speech Language Pathologist who has worked in the public schools for many years and am also a mother to three beautiful children. My eldest daughter, Isabella, is a first grader and is the same age as the young victims of Sandy Hook Elementary. How many shootings are enough to precipitate a response? You have the position, and influence, to make a positive change in gun laws. I urge you to take sensible action. I understand this is a multi-faceted problem and the list is long, trying, and incomplete. However, because it is a difficult path does NOT entitle a course of no action or WEAK legislation. I respect the law-abiding hunter and know many; and as any sensible hunter would tell you, these assault weapons and high capacity magazines are not used for sport - they are an effective means for mass and quick killing. I don't believe the Second Amendment grants people the right to arm themselves anyway they see fit. There must be COMMONSENSE laws in place that will make gun ownership safer and I believe the greater society supports this action NOW.

**I am now a single issue voter. The time is now! Take action now!**

I urge you as my legislator to do the right thing. **I urge you to BAN semi-automatic assault weapons and high capacity ammunition.** Voice these positions loudly, work in a bi-partisan manner and urge your constituents to do the same in a peaceful manner. Please take action now, do the right thing for our society, for our kids. For me, this is the only way that I will know in my heart that something positive has come out of these senseless tragedies.

Thank you for your attention to this important issue.

“Hearing on the Assault Weapons Ban of 2013”

March 6, 2013

Chairman Patrick Leahy  
Senate Judiciary Committee

Dear Senator Leahy and Members of the Senate Judiciary Committee:

I am writing to support the passage of Senator Feinstein’s S.150, the Assault Weapons Ban. On April 16, 2007, my family was devastated by the loss of a close and dear friend, Reema Samaha, who was killed in her French classroom at Virginia Tech. My children still struggle with the loss of their good friend and not a day goes by I do not think of her.

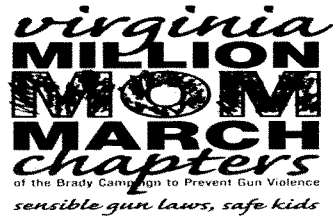
But, the loss on Reema’s family was far worse. As it was on the 31 other families who lost someone they loved that day. I also knew Erin Peterson, an only child, who died with Reema. Unfortunately, our high school graduated the Virginia Tech killer and Michael Kennedy, who gunned down two police officers at our local police station.

Since April 16, 2007, I have come to know the majority of families who lost someone that day and the survivors. I cannot begin to tell all of you the horrific impact that April 16 has had on these families and survivors. Any time you think of gun violence, picture an empty chair at the dining room table, a mother whose eyes well up every time you mention her child’s name, a father rocking in a chair, the grief so great, he cannot speak, a sister who cares for her siblings while holding up her parents who fall apart, children who no longer have a father to hold them, survivors who struggle with physical and psychological wounds every day. Gun violence is a best friend whose lyrics are “I never had a chance to say good-bye,” a grandmother who lost both her grandchild and child, because her child will never be the same again. Gun violence impacts generations.

The Supreme Court was very clear that the Second Amendment is not inviolate. You have the right – and the duty – to ensure the public safety of your citizens and the right of all people to live without the fear of gun violence in their homes, their schools, their malls and churches. Our founding fathers never envisioned the types of weapons we have today – weapons that were intended for war, not our streets. Assault weapons and high-capacity magazines may be “fun” for those who like to shoot multiple rounds, but they are unnecessary for sport, hunting or self-defense.

This country has stood by too long and done nothing while we watch tragedy after tragedy, from Columbine to Blacksburg, Chardon High School to Newtown, Aurora to Tucson, on and on and on. Meanwhile, real families suffer the consequences each and every day. I implore you to act and pass this much-needed legislation.

Sincerely,  
Lu Ann Maciulla McNabb



The Senate Judiciary Committee

March 5, 2013

Dear Senate Judiciary Committee Members:

I respectfully submit this testimony in support of S150, Senator Feinstein's Assault Weapons and High Capacity Magazine Ban bill. As the Virginia State President of the Million Mom March, I am speaking on behalf of all of our chapters and members. We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights and this bill is where Congress should start.

Many of our members attended last week's Senate Judiciary Hearing. We heard heartbreaking testimony by the father of a Sandy Hook victim and wrenching testimony by a doctor on the scene. We saw video clips of how powerful and destructive assault weapons are and we listened intently as Police Chief Flynn stated that getting assault weapons off the street is the single most important thing that can be done to protect his force. We heard Mayor Nutter speak on behalf of Mayors all over this country and state that the assault weapons ban is their top priority.

It is difficult to fathom how or why weapons designed for battlefield use with a sole purpose of killing as many people as possible, as quickly as possible, were ever allowed into the civilian market. The same goes for high-capacity magazines that can turn an ordinary handgun into a killing machine. The only explanation is of course commercial. Gun manufacturers profit from the sale of these weapons. However, Congress has been protecting these dangerous commercial interests at the expense of public health and safety and it must stop.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans – not to safeguard the commercial interests of reckless gun manufacturers. Hiding behind the Second Amendment as an excuse for inaction is unacceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every

right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. We are counting on you to get this done; for our country and for our children. Please pass S150 now.

Most respectfully,

Martina Leinz  
Virginia State President  
Million Mom March

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

My name is Michelle Dargon and I live in Newtown, CT.

I have 2 beautiful children who are 5 years old.

The December 14, 2012 tragedy has left me heartbroken for the victims, their families, friends and heartbroken for my children who now live in such a violent world. No one should have to live in fear. No one should have to live looking over their shoulder while shopping in a mall, grocery store, taking in a movie, attending school or simply going about their lives. No one should have to put their kids on their school bus and fear that they may not come home. NO ONE.

I support SB 150, Senator Feinstein’s bill to ban assault weapons and high capacity magazine bans and I demand a vote.

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

I am a mother of three boys in first, fourth and sixth grade in Newtown. We were lucky in that our family still has all of our members. However, we are one of the thousands of unlucky victims who now live in a community forever changed, still trying to figure out how to go back to "normal." I don't foresee it happening for a long time.

Please enact the legislation proposed in SB-150. Without better restrictions on the weapons sold to ordinary citizens, it is inevitable that the arms race for bigger and better weapons will lead to greater casualties.

There is an angle to the discussion about guns that I have not seen discussed: the idea that there are good guys and bad guys and that the constitution allows for an arms race for anyone so inclined to carry a bigger and better weapon than the “bad” guy, bad guys being those who use a gun to threaten harm in order to gain something, those with mental health issues, those who lose their temper, those who accidentally fire a gun that injures or kills someone, those who do not maintain their weapons in a safe place, those who go on shooting rampages, and, now, thanks to NRA propaganda, even those in government.

I must agree with the NRA on one point: universal background checks and restricting sales will not eliminate “bad” guys with guns. Why? Because we ALL have the potential to do bad things. There is no way to unequivocally identify the “good guys” and the “bad guys.”

If the NRA had its way, everyone with a gun would become a judge and jury, with qualifications to be reconciled at a later time, after the damage has been done. Clearly there will be those who are bad judges. We see it all of the time: Nancy Lanza, who gave her troubled son access to ridiculously high powered weapons; Jeffrey Giuliano, who shot his own son in New Fairfield, thinking he was an intruder; Robert Bell, who shot his wife in a domestic dispute in New Fairfield; Jason Razzino, a father in Norwich who shot a police officer before taking his own life; and most recently Debra Denison who shot her two grandsons and then shot herself in Preston, CT. These people were not “bad” people before the shootings occurred. Their neighbors and friends are often quoted in the papers saying they never saw it coming. We all have the potential to make horribly bad decisions in an instant. To err is to be human. With more and more powerful guns in more people's hand, however, those bad judgements are that much more likely to end in profound injury and death.

There are ways to reduce the damage done by those making bad choices. The fewer weapons there are in total, and the less powerful they are, the less likely there are to be massive injuries and deaths. Better background checks can help eliminate those most likely to do bad things. Make the requirements to obtain a gun stricter and stop letting the gun manufacturers distribute the newest and most powerful weapons to any customer who has bought into the propaganda that they need bigger and better weapons.



If you accept the NRA's position that the second amendment rights should be less restricted, then you are allowing all people, with all of their good and bad characters traits, to have access to bigger and more powerful guns and to serve as judge and jury without any qualifications. This is not the world I want to live in.

Please do what you can to limit magazine capacity, expand the ban on assault-style and semi-automatic weapons, increase universal background checks, restrict registration to those most qualified, require permits of all gun owners, limit the number of firearm purchases in a 30-day period and require background checks for ammunition purchases.

Thank you,

Michelle Embree Ku

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

As a long-time resident of Newtown, whose three children went through Sandy Hook Elementary, I know about the rapid devastation that assault weapons can do to a community. I urge you to support Senator Feinstein’s Assault Weapons ban bill. It’s the right thing to do and it will, without a doubt, save lives.

Miranda Pacchiana

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

Dear Members of the Senate Judiciary Committee,

I am a mother of four children (who graduated from Sandy Hook Elementary School) and the shooter lived in my neighborhood. We lost our neighbors, educators, and principal on that dreadful morning on December 14, 2012. Our neighborhood is one of the safest places in this country. Sandy Hook Elementary School was one of the most nurturing environment for my four children therefore we were in a state of shock when we heard the horrific news on December 14th.

After more than two and a half months, our community is still reeling from the tragic loss of 26 innocent lives. December 14th has forever changed our town, our state and our country. If something like this can happen in Sandy Hook then it can happen anywhere in this nation.

Since December 14th, I have spent my days and nights researching the issue of gun violence and I am shocked by what I have learned. I learned that I could go to an unlicensed gun dealer and buy a gun without a background check, buy guns from gun traffickers, buy unlimited amount of ammunition online and I can buy a military-style assault weapons with high capacity magazines easily. Meanwhile 100,000 Americans are shot every year and 32,000 of those individuals die (~12,000 are murdered and ~19,000 commit suicide using guns). Almost 2,500 Americans have died due to gun violence since December 14th. One out of five Americans know a victim of gun violence. Recently, the Kaiser Family Foundation poll found that Americans worry more about being a victim of gun violence than they do about losing their job or paying their mortgage.

Polls show that 82% of gun owners including 74% of NRA members support requiring criminal background checks for anyone purchasing guns. Yet, the NRA is fighting background checks. Pew Research Center poll found 55% respondents favored assault weapons ban. Despite this, rumor has it that you don't have the political courage to pass the assault weapons ban and other sensible gun regulations. I was hoping that the brutal massacre of 20 innocent children and six of their educators in Newtown would forever change you and you would act swiftly and boldly to save thousands of American lives.

I believe stronger gun regulations would have saved lives on that tragic day. I also believe if millions of people in this nation demanded change after Columbine, Virginia Tech, Tucson and Aurora then maybe just maybe this type of massacre in our neighborhood elementary school could have been avoided. It is unacceptable for us to not take action. Too many Americans are dying every year. You acted swiftly and boldly to institute measures to improve public safety after September 11th and you must do the same after December 14th. We have the right to feel safe in our schools, malls, movie theaters, places of worship, work place, salons and on our city streets.

I made a promise on December 14th that I will no longer stay silent and do more to save lives by writing, e-mailing and calling the lawmakers. I traveled down to Washington DC with 40 Newtown teachers, clergy, parents, students, other members of Newtown Action Alliance and families of victims on February 26th and 27th to meet with congressional leaders and to attend Senator Feinstein's Assault Weapons Ban hearing. We shared our stories of tragic loss, our pain and we asked many of you to honor the 26 lives by helping us to turn our tragedy into meaningful action and change. Please have the political courage to save American lives by banning military-style assault weapons, prohibiting gun trafficking, requiring universal background check on all gun purchases and limiting high capacity magazines. You have the ability to save lives and I am asking for your leadership.

Thank you for your consideration.  
Po Murray

“Hearing on the Assault Weapons Ban of 2013”

February 27, 2013

I am the Chapter Head for Moms Demand Action, Richmond and Southeastern VA. I represent 1200 registered members in this region.

We strongly support SB 150, Senator Feinstein’s bill to ban assault weapons and high capacity magazine bans. Please let the Senators know that we demand a vote.

The issue with military-style assault rifles is not that they are big or scary, and it is not that the majority of crimes are committed with them; in fact the majority of gun deaths are from handguns. However, the chance of surviving if shot with a handgun is large; estimates range from 70-80% survival rate overall for handguns.

Military style assault rifles such as the AK-47 (semi-automatic version of the fully automatic military version) and the AR-15 (semi-automatic civilian version of the fully automatic M-16 machine guns) differ in only 1 respect from their military versions, and that is that the trigger must be pulled for each shot. The bullet type, speed of the bullet, and specs of the guns are otherwise the same. These guns have a fatality rate of about 25% per shot on the battlefield, where wounds are sustained typically a long distance from the shooters, usually 100 yards or more. Thus the bullet velocity of 3000 ft/second, which is higher than other guns, slows significantly as the bullet travels further from barrel to target, making the shot more survivable.

This is not the case in civilian spree shootings such as Newtown, and these types of semi-automatic guns are favored by spree shooters. In Newtown, where people were shot at close range, there were 2 survivors out of 26 shot. This is a massive fatality rate. Also, the NRA has claimed that these guns only have a sustained maximum fire rate of 12-15 rounds a minute. They fail to note that this is defined as the rate when one includes loading, aiming, firing, and allowing the gun to cool down between shots. The actual rate at which these guns are capable of firing, their max rate, is 45 shots per minute according to the manufacturers.

This means that in civilian hands, 45 shots per minute can be fired from a weapon for which there are magazines commonly available that hold 30 or more rounds. The shooters do not even need to re-load.

Furthermore, the bullets used in these guns are particularly dangerous. These guns take 223 rounds, which are designed to fragment in the body into a snowstorm of metal fragments, generating maximal tissue damage and hemorrhage for maximal lethality in a battlefield situation. Because the bullets fly at such a high velocity, they also create a shockwave in tissue that can kill even if a vital organ or major vessel is not hit. This is especially true in children. I know a great deal about tissue damage to the human body because my doctoral degree is in human anatomy and am qualified to teach Gross Anatomy to medical and dental students, and have done so at 2 major universities.

For all the reasons above, spree shootings using these weapons are practically unsurvivable. These weapons belong in the hands of our military. They do not belong in the hands of civilians. Hunters do not NEED this much firepower to kill their targets, and in fact the use of these weapons in the context of hunting makes accidental shootings more likely because more rounds are fired at targets.

These weapons should be illegal. There is plenty of legal precedent. When sawed-off shotguns were frequently used in massacres during the gang wars of the prohibition era, they were outlawed. We no longer have massacres with sawed-off shotguns. When "Tommy Guns" were regulated so heavily that the fully-automatic machine guns practically disappeared from the market, there were no more massacres with fully automatic machine guns.

Make no mistake that it will take at least a generation, maybe two, before we see an appreciable difference in crime with these guns after a ban. The populace stocks up on the guns and ammo after EVERY massacre as the NRA tells them to. There are many guns already out there in civilian hands and nothing much can be done about that except to wait for that population to age out. But we can stop any more of these killing machines from going onto the market. And we can stop new high-capacity magazines from going onto the market. Those can wear out (springs, rust).

Please tell the judiciary to do the right thing, do what is right for public safety, rather than obeying their gun lobby masters who write fat checks. The NRA accounts for only 1% of the population of the US. They are loud, and well organized, but they are a minority. I urge you to tell the Senate to vote the way the majority of citizens want them to. Outlaw these guns and high-capacity magazines. Do it now. Do it permanently with no sunset clauses like the Brady Bill.

Thank you,

Rebecca Caffrey, PhD, MBA, MBA  
 Chapter Head, Richmond and SE Virginia  
 Moms Demand Action  
[www.momsdemandaction.org](http://www.momsdemandaction.org)



January 19, 2013

The Honorable Diane Feinstein  
United States Senate  
331 Hart Senate Office  
Washington, D.C. 20510

The Honorable Carolyn McCarthy  
United States House of Representatives  
2346 Rayburn House Office Building  
Washington, D.C. 20515

Dear Senator Feinstein and Congresswoman McCarthy:

20 Children is a non-partisan, grassroots movement of parents and families across the U.S. who have come together to end gun violence. We are pleased to support your legislation, the "Assault Weapons Ban Reauthorization Act of 2013." If enacted into law, your bill would renew and strengthen the 1994 ban on semiautomatic assault weapons (SAWs) and would help keep these military-style guns out of the hands of criminals. Enhancing the expired 1994 law by ensuring that all SAWs are banned from sale is vitally important to achieving the intent of the assault weapons ban, which is why 20 Children supports closing all loopholes in this regard.

SAWs were the weapon of choice for the shooters in Newtown and Aurora because of their capacity to inflict the maximum amount of casualties in the shortest period of time. These guns were originally developed for use on the battlefield, and not intended for hunting purposes or civilian self defense. In order to reduce gun violence and protect children, the nation must reinstate reasonable protections on these types of weapons.

20 Children submitted recommendations to the White House Task Force on Gun Violence and called for many of the provisions contained in your legislation, including:

- Banning the importation of SAWs for sale;
- Banning the sale of SAWs by licensed dealers;
- Banning the private sale or personal transfer of SAWs; and
- Strengthening the definition of SAWs enough to keep all similarly dangerous weapons from being manufactured and sold in the future.

The Newtown tragedy made clear the urgent need for common sense legal, legislative and policy reforms to help keep our nation's children safe. Gun violence should be treated as the dire public health threat that it is. 20 Children will continue to advocate for the enactment of evidence-based gun policies that will help reduce gun violence and save lives. Every day that passes without enacting a comprehensive set of safety measures is another day that children's lives are needlessly put at risk.

20 Children appreciates your leadership on this very important issue and we look forward to working with you to pass this necessary legislation.

Sincerely,

20Children.org



Laurel G. Bellows  
President

AMERICAN BAR ASSOCIATION

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Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
abapresident@americanbar.org

January 17, 2013

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Office Building  
Washington, DC 20510

Dear Senator Feinstein:

I write on behalf of the American Bar Association and its nearly 400,000 members nationwide to commend you for your exemplary leadership in introducing the Assault Weapons Regulatory Act of 2013. We enthusiastically support the proposed act, which will carefully and rationally regulate the availability of military assault-type firearms and the large-capacity ammunition feeding devices they utilize.

These particular weapons and clips were designed for killing large numbers of persons quickly; they have no other use in civilian hands. The ABA believes that enactment of this legislation is an essential step, though only part of the answer, to keeping our nation's school children and all our citizens safe from future mass shootings.

It is not surprising that the public is demanding action by Congress following the horrific slaughter last month of young children and their teachers at the Sandy Hook Elementary School in Newtown, Connecticut. This event – following on the heels of mass killings at a movie theater in Aurora, Colorado, and mass killings in Tucson, Arizona, that also resulted in severe injuries to former Representative Gabby Giffords – has caused the nation to more fully recognize the danger to the public posed when the common components of these shootings come together: military firearms, high-capacity clips and their use by mentally disturbed persons who easily amassed the firepower capable of quickly killing many innocent citizens involved in everyday settings and activities. We do not need another such tragedy to give us incentive to improve and reenact the federal assault weapons ban that expired in 2004.

The expired 1994 federal assault weapons ban clearly reduced the incidence of assault weapons used in crime. In the five-year period (1990-1994) before enactment of the ban, assault weapons constituted 4.82 percent of the crime gun traces the Bureau of Alcohol, Tobacco and Firearms (ATF) conducted nationwide. When the ban was in effect, these assault weapons made up only 1.61 percent of the guns ATF traced to crime – a drop of 66 percent from the pre-ban rate. ATF data showed a year-by-year decline in the percentage of assault weapons, evidence that the longer the statute was in effect, the less

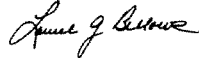


available these weapons became for criminal misuse. A report by the Department of Justice documented these findings along with a decline in the absolute number of assault weapons traced to crime during this period. Every major law enforcement organization in the country has long supported a strong assault weapons ban.

The ABA applauds your revisions to the 1994 Act that strengthen it in a number of important respects. The proposed Act protects the rights of existing gun owners by carefully defining the characteristics of assault weapons to distinguish them from the over 900 specifically named weapons used for hunting or sporting purposes. It grandfathers into legal status assault weapons currently owned rather than rendering them illegal, but requires more careful regulation of their transfer and sale by bringing them and large capacity ammunition devices under the provisions of the National Firearms Act, subject to the existing registration requirements long in effect for fully automatic firearms. We also strongly support the proposed act's ban on future transfer of grandfathered ammunition clips, as well as the proposed voluntary buyback of these clips, as we believe the public safety of everyone in our country will be best served by eventually eliminating these devices from civilian circulation.

We commend you for drafting a new assault weapons law that is clear and enforceable and that will commence the process of removing these weapons from our communities. The ABA stands ready to work with you and leaders in both parties in the Senate and the House so that the Assault Weapons Regulatory Act of 2013 will become law.

Sincerely,



Laurel G. Bellows  
President



*A Union of Professionals*

### **Newtown: A Call for Ideas**

*(Submitted on Behalf of the American Federation of Teachers)*

We have a collective responsibility to ensure that our public schools are safe sanctuaries—both physically and emotionally—for every child, every educator and every community. That’s the first step in creating safe, nurturing, supportive learning environments where teachers can teach and kids can learn and grow.

Each of us was shaken to our core by the brutal massacre of innocent children and educators in Newtown, Conn. Two of the educators who were killed and one who was wounded are part of the AFT family. We grieve for them as we do for the entire Newtown community. Right now, as we still mourn, we have to help those in Newtown heal and we have to act. The instinct to protect, to serve and to love children is at the core of every educator and school employee. It is why educators need a critical voice in ensuring what happened in Newtown never occurs again.

Creating safe schools can’t be an empty promise. It will require a balanced approach that addresses both the physical and emotional safety of kids, educators and school employees—including comprehensive school safety programs and procedures, welcoming and supportive school environments, mental health supports and commonsense gun safety legislation.

#### **School Safety Programs and Procedures**

- Every state should have policies in place requiring individual school/building safety plans and districtwide safety plans. These plans serve as a guide to address all safety needs in the school, in areas such as lockdown procedures, chain of command, evacuations, personnel assignments in crisis situations, procedures for drills or practices, and reporting procedures.
- Every school should conduct regular audits or building walkthroughs to evaluate and analyze the effectiveness of their school safety and security plans.
- Audits should be designed and implemented by the entire school community, including administrators, parents, students, educators, school support staff and their unions. These same parties also should be given the chance to offer feedback before the results are publicly released.
- Appropriate state and local agencies need to devote more attention to ensuring that school communities and families are better informed about community- and school-level emergency preparedness protocols. This should include a special focus on the protocols for communication between the families of victims and the agencies responsible for incident management.
- Communication with and between students, school staff, parents, community and first responders is absolutely critical to every step and stage of safety planning and emergency preparedness. This holds true in planning and implementation of the plans as well as in the aftermath of tragedy.



- Schools should provide regular training for all school employees in their district's and school's emergency management systems and protocols to ensure that staff are able to protect and assist students during any crisis. All school staff also should receive regular training in violence prevention such as that required by New York state.
- As part of a school safety program, panic buttons or other methods of quickly contacting first responders should be available in classrooms.
- Our public schools should not be armed fortresses. Efforts to arm educators and increase guns in our schools put educators and students at risk and undermine our ability to provide a safe and nurturing learning environment for students.
- Whether to bring police officers into schools should be decided on a school-by-school basis; it should be the decision of the school community and must be part of a comprehensive school safety plan. Some schools, due to their remoteness or following horrendous tragedies such as the massacre in Newtown, may decide to have police at their individual schools. If a school decides to bring police into schools, they should be part of the fabric of the school community, not simply a stationed armed guard. School resource officers and programs like D.A.R.E. (Drug Abuse Resistance Education) provide rich learning experiences and opportunities for students in addition to being part of the school safety team.

#### **Welcoming and Supportive School Environments**

- When unspeakable tragedies do occur, we must provide immediate and ongoing physical and emotional support and assistance to students, parents, educators and school employees to help them grieve, heal and feel safe once again.
- Safe and respectful environments must be created for all students in our schools. Investing in ongoing schoolwide practices to reduce bullying behavior, increasing after-school activities, and integrating community services and programs like peer counseling, wellness programs and other social supports, are just a few examples of how communities like Baltimore and Cleveland have been able to reduce school-based violence. There are many other programs (such as Peace First) that can serve as models for how communities can reduce school-based violence. Noted researchers have asserted that this type of connectedness is a key element in fostering a sense of belonging and security in neighborhoods, particularly among marginalized students.
- Programs encouraging partnerships between schools, local law enforcement and appropriate community agencies (such as mental health) must be created to prevent and reduce school violence. The program would establish the creation of school-based safety committees composed of parents, educators, student and administrators. Law enforcement and other agencies should develop ongoing relationships with school safety committees and work jointly with them to help create safe and respectful environments, prevent and address violent incidents in schools, and serve as a resource on all safety issues for the faculty, staff and student body.

#### **Mental Health Supports**

- As a nation, we have a collective responsibility to help those who are suffering from mental health issues by making services more accessible. To do this, we need to reverse the recent

trend (documented below) of slashing funds for social workers and mental health services; we must let people know they are not on their own and help is available.

- States have cut at least \$4.35 billion in public mental health spending from 2009 to 2012, according to the National Association of State Mental Health Program Directors. In fiscal year 2012 alone, 31 states that provided information to the association reported cutting more than \$840 million. We must reverse this trend.
- We need to establish an appropriate ratio of students to counselors, psychologists and social workers in order to ensure that children get the diagnosis, support and help they need to reduce the incidence and risk of students feeling disaffected and isolated in their schools. Parents then have a responsibility to ensure their children participate in counseling or other services recommended by school or other mental health professionals.
- Community schools offer a vehicle for how schools can best deliver a wide range of coordinated services, including mental health services. This strategy puts in place a safety net to prevent students and families from falling through the cracks. At the crux of the community school strategy are coordinated, results-focused partnerships that include both public and private entities, to provide not only comprehensive educational and developmental services, but also access to mental health services for students and families, with the objectives of improving academic achievement, building school and community engagement, and improving the skills and well-being of the surrounding community residents.
- A concentrated and sustained public campaign to destigmatize mental health issues is needed. Effective prevention hinges on the networks of support available to students and members of their communities.

#### **Commonsense Gun Safety Legislation**

The AFT supports commonsense gun control legislation, including:

- Banning assault weapons and large-ammunition magazines, such as the bill introduced on Jan. 3 by Rep. Carolyn McCarthy (D-N.Y.);
- Requirements for thorough background checks;
- Ending the “gun show” loophole; and
- Ensuring gun owners keep their weapons secure while creating or increasing penalties for those who fail to do so.

We have witnessed the violent effects of gun violence for too long—both in our schools and in our neighborhoods. The tragic massacre at Sandy Hook Elementary must be a galvanizing moment to change this. We stand prepared to not only flesh out these ideas but work with you to create safe schools and communities for everyone in America.



**THE ALLIANCE  
FOR BUSINESS LEADERSHIP**

December 20, 2012

The Honorable Harry Reid  
Office of the Majority Leader  
S-221, U.S. Capitol  
Washington, DC 20510

Dear Majority Leader Reid,

When the Senate convenes in January 2013, we urge you to swiftly take-up and move to pass legislation to permanently reinstate the ban on semi-automatic assault weapons and high capacity magazines. Senator Diane Feinstein has indicated she will introduce this bill on the first day of the 113th Congress, and we believe immediate consideration of this measure is critical.

We join the nation in expressing our sadness and outrage over the tragic loss of innocent life at Sandy Hook Elementary School in Newtown, CT. As parents, we question how we keep our children safe in a world where there is unbridled access to semi-automatic weapons. As business leaders, we have the added responsibility of asking how we protect our employees when few workplace security measures can withstand the powerful blows of an assault rifle.

Semi-automatic assault weapons have no place in a civilized society. They do not belong in our homes or on our streets. They have no use in hunting or in sport. They are weapons of war with one purpose: to kill as many people as possible in the shortest amount of time. We have witnessed their chilling effectiveness too many times since the assault weapons ban expired in 2004.

As business leaders who believe in the role of government, we struggle to understand how Congress can see fit to regulate the toy guns with which America's children play, but not the real guns used to claim their lives. We cannot continue to allow the will of a minority to stand in the way of common sense gun control that protects the lives of the majority. As we endeavor to keep our citizens safe – in schools, workplaces, municipal offices, places of worship and elsewhere – we need your leadership. The moment of truth has come, and the time for action is now.

Sincerely,

Members of the Board, The Alliance for Business Leadership

**David Belluck**  
Managing Partner  
Riverside Partners  
Vice-Chair, Alliance Board

**Dr. Joshua Boger**  
Founder & CEO (retired)  
Director  
Vertex Pharmaceuticals  
Vice-Chair, Alliance Board

**James Boyle**  
President & CEO  
Sustainability Roundtable  
Alliance Board Member

(continued)

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## THE ALLIANCE FOR BUSINESS LEADERSHIP

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**Janet Kraus**

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Harvard Business School  
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**Thomas Dretler**

Executive in Residence  
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**Diane Hessian**

President & CEO  
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Alliance Board Member

**Jack Manning**

President & CEO  
Boston Capital Corporation  
Alliance Board Member

**Philip Edmundson**

Chairman & CEO  
William Gallagher  
Associates  
Alliance Board Member

**Kip Hollister**

Founder & CEO  
Hollister, Inc.  
Alliance Board Member

**James Roosevelt**

President & CEO  
Tufts Health Plan  
Alliance Board Member

**Carl Ferenbach**

Co-Founder & Advisory  
Director  
Berkshire Partners  
Alliance Strategy Group  
Chair

**Trish Karter**

Founder & CEO  
LightEffects Farm  
Founder & Chief Deer  
Dancing Deer Baking Co.  
Alliance Board Member

**Paul Sagan**

CEO & President  
Akamai Technologies  
Alliance Board Member

**Ron Shaich**

Founder & CEO  
Panera Bread  
Alliance Board Member

**About the Alliance**

*The Alliance for Business Leadership is a non-partisan alliance of CEOs, business leaders, entrepreneurs and investors committed to building an economy that supports long-term economic growth and prosperity for all. For more information, visit [www.allianceforbusinessleadership.org](http://www.allianceforbusinessleadership.org).*

CC: President Barack Obama  
Vice President Joseph Biden  
Senate Minority Leader, Mitchell McConnell  
Members of the United States Senate



**James L. Madara, MD**  
Executive Vice President, CEO

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(f) 312.464.4184

January 29, 2013

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of our physician and medical student members, the American Medical Association (AMA) is writing to express our support for S. 150, the "Assault Weapons Ban of 2013." The AMA has a long-standing policy, passed by physicians in our House of Delegates representing all states and medical specialties, strongly in support of reinstating and strengthening the expired 1994 assault weapons ban.

The AMA believes that gun violence is a serious public health issue. Physicians and other health care professionals experience first-hand its devastating effects. The increased firepower of assault weapons and high capacity magazines heightens the risk of multiple gunshot wounds and severe penetrating trauma, resulting in more critical injuries. The severity of wounds and multiple casualties resulting from assault weapons have devastating consequences for families and society.

Your legislation would take important steps towards reducing the epidemic of gun violence by limiting the availability of assault weapons and high-capacity magazines. We applaud your leadership on this issue and look forward to working with you to protect the health and safety of our citizens.

Sincerely,

James L. Madara, MD



## AMERICAN ACADEMY OF NURSING

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January 30, 2013

The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:

The American Academy of Nursing is pleased to endorse the *Assault Weapons Ban of 2013*. The Academy serves the public and the nursing profession by advancing health policy and practice through creating, synthesizing and disseminating nursing knowledge. Every day across America, the Academy and its members develop initiatives to drive reform of America's health care system. Every day across America, 34 Americans are murdered by gun violence.

Firearm related mortality and morbidity in the United States is a significant public health problem, accounting for over 30,000 preventable deaths a year.<sup>1</sup> The health implications of illegal gun use are staggering. The total costs of fatal and nonfatal firearm injuries is over \$37 billion per year, according to 2005 information from the Centers for Disease Control and Prevention. A 1999 study noted that nearly half of the health systems costs related to firearm injuries are borne by US taxpayers.<sup>2</sup>

It is estimated that restricting firearm access could reduce suicide and homicide deaths by more than 25%.<sup>3</sup> Conversely, access to a firearm increases a battered women's odds of being killed by her abuser by more than 5 times.<sup>4</sup> In 2007, more preschoolers under age 5 died by gunfire (85 children) than law enforcement officers killed in the line of duty (57 officers).<sup>5</sup>

<sup>1</sup> Murphy SL, Xu JQ, Kochanek KD. Deaths: Preliminary data for 2010. National vital statistics reports; vol 60 no 4. Hyattsville, MD: National Center for Health Statistics. 2012.

<sup>2</sup> Cook PJ, Lawrence BA, Ludwig J, Miller TR. The Medical Costs of Gunshot Injuries in the United States. *JAMA*. 1999;282(5):447-454. doi:10.1001/jama.282.5.447.

<sup>3</sup> Fotios C. P, Alkistis S, Theodoros NS, Spyros K, Lisa E, Eleni T. (2009). Preventing suicide and homicide in the United States: The potential benefit in human lives, *Psychiatry Research*, 169(2), 154-158.

<sup>4</sup> Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xiao, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multi-site case control study. *American Journal of Public Health*, 93(7), 1089-1097.

<sup>5</sup> Brady Campaign to Prevent Gun Violence <http://www.bradiycampaign.org>



Given the ongoing toll of gun violence in the United States through suicide, homicides and accidental shootings, the American Academy of Nursing supports:

1. Creating a universal system for background checks designed to highlight an applicant's history of dangerousness and require that all purchasers of firearms complete a background check.
2. Strengthening laws so that high-risk individuals, including those with emergency, temporary, or permanent protective or restraining orders or those with convictions for family violence, domestic violence and/or stalking are prohibited from purchasing firearms.
3. Banning the future sale, importation, manufacture, or transfer of assault weapons, incorporating a more carefully crafted definition of the term "semiautomatic assault weapon" to reduce the risk that the law can be evaded.
4. Banning the future sale, importation, manufacture, or transfer of large capacity (greater than 10 rounds) ammunition magazines.
5. Ensuring that health care professionals are unencumbered and fully permitted to fulfill their role in preventing firearm injuries by health screening, patient counseling, and referral to mental health services for those with high risk danger behaviors.
6. Focusing federal restrictions of gun purchase for persons on the dangerousness of the individual and fully funding federal incentives for states to provide information about dangerous histories to the National Instant Check System for gun buyers.
7. Supporting enriched training of health care professionals to assume a greater role in preventing firearm injuries by health screening.
8. Researching the causes of and solutions to firearm violence.

The American Academy of Nursing applauds your leadership in fighting this national health crisis. Please do not hesitate to contact me (Cheryl\_Sullivan@AANet.org); the co-chairs of the Academy's Expert Panel on Psychiatric, Mental Health, Substance Abuse, Michael Rice ([mjrice@unmc.edu](mailto:mjrice@unmc.edu)) and Linda Beeber ([beebler@email.unc.edu](mailto:beebler@email.unc.edu)); or the co-chairs of the Academy's Expert Panel on Violence, Kathryn Laughon ([kic6e@virginia.edu](mailto:kic6e@virginia.edu)) and Angela Amar ([aamar@emory.edu](mailto:aamar@emory.edu)).

Sincerely,



Joanne Disch, PhD, RN, FAAN  
President  
American Academy of Nursing



Cheryl G. Sullivan, MSES  
Chief Executive Officer  
American Academy of Nursing

American Academy of Pediatrics  
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**Department of Federal Affairs**  
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Fayetteville, GA

January 17, 2013

The Honorable Dianne Feinstein  
U.S. Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein,

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, I am pleased to endorse the *Assault Weapons Regulatory Act of 2013* and to commend your tireless leadership on gun safety.

The recent Newtown, Connecticut massacre resulted in a day of sadness and grief for everyone who cares for children, but it was also a call to action for Americans. We must do more to ensure that children feel safe and are safe in their homes, schools and communities, and to diminish injury and mortality from gun violence that is occurring every single day. Enacting the *Assault Weapons Regulatory Act of 2013* would be an important first step toward achieving those goals.

Firearm-related deaths continue to be one of the top three causes of death in American youth.<sup>1</sup> Gun injuries cause twice as many deaths as cancer, 5 times as many as heart disease, and 15 times as many as infections.<sup>2</sup> Clearly, gun safety is a serious public health crisis that requires a meaningful and persistent response. Our nation deserves nothing less than our vigilance in this regard.

The AAP supports reinstating the ban on assault weapons and prohibitions regarding high ammunition assault magazines as outlined within the *Assault Weapons Regulatory Act of 2013*. Reinstating the ban will certainly help reduce the destructive power of firearms along with common sense protections such as requiring broader mandatory background checks, weapon registrations and tracking of firearms.

Again, thank you for all that you do to protect children. The AAP stands committed and prepared to support these important gun safety policies. For more information, please contact Sonya Clay at 202-347-8600.

Sincerely,

Thomas K. McInerney, MD, FAAP  
President

- 
- <sup>i</sup> American Academy of Pediatrics, Council on Injury, Violence, and Poison Prevention Executive Committee. *Firearm-related injuries affecting the Pediatric Population*. Pediatrics 2012;130(5):e1416-e1423.
- <sup>ii</sup> WISQARS (Web-based Injury Statistics Query and Reporting System). Atlanta. Centers for Disease Control and Prevention ([www.cdc.gov/nceip/wisqars](http://www.cdc.gov/nceip/wisqars)).





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Finally, the ACS believes we must fund evidence-based research on firearm injury and create a national firearm injury database to inform federal health policy. Thank you for your work on this important issue. We look forward to continued collaboration.

Sincerely,

Julie A. Freischlag, MD FACS  
Chair, Board of Regents

Brent Eastman, MD FACS  
President

Andrew L. Warsaw, MD, FACS  
Chair, Health Policy and Advocacy Group

David B. Hoyt, MD FACS  
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**ACOG**  
 THE AMERICAN CONGRESS  
 OF OBSTETRICIANS  
 AND GYNECOLOGISTS

January 23, 2013

The Honorable Dianne Feinstein  
 331 Hart Senate Office Building  
 Washington, DC 20510

**Office of the President**  
 James T. Breedon, MD, FACOG

Dear Senator Feinstein,

ACOG is proud to support legislation you've introduced, the Assault Weapons Regulatory Act of 2013. Thank you for your leadership and courage in pursuing this issue in the US Congress.

Did you know that American women who are killed by their intimate partners are more likely to be killed with guns than by all other methods combined? That a recent study shows that access to firearms increases the risk of intimate partner homicide more than five times compared to instances where there are no weapons? And that women are twice as likely to be shot and killed by intimate partners as they are to be murdered by strangers using any type of weapon?

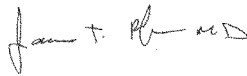
Clearly, gun safety is an issue of great importance to our ob-gyn specialty and to our patients. I encourage all ob-gyns to talk to our patients about their safety and about gun ownership safety. And it's imperative that our Nation takes reasonable action to help stem the tide of gun violence in America.

ACOG backs your legislation to reinstate the assault weapons ban, while protecting legitimate hunters and the rights of existing gun owners and increasing safety requirements for gun ownership. Many physicians, like me, find it ironic that physicians are required to undergo criminal background checks and finger printing to receive medical licenses that allow us to care for victims of gun violence, while many jurisdictions don't require the same of gun owners.

Will your legislation alone stop all gun violence in America? Of course not. But, especially after the Sandy Hook tragedy, it's clear that we have to do what we can to protect our patients, our families, and innocent lives.

ACOG stands with you in support of these sensible steps to help ensure the safety of our communities, and to help make sure there are no more Sandy Hooks.

Sincerely,



James T. Breedon, MD, FACOG  
 President



American  
Public Health  
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January 24, 2013

The Honorable Dianne Feinstein  
U.S. Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the American Public Health Association, I write in strong support of the Assault Weapons Ban of 2013, legislation to ban certain semiautomatic rifles, handguns, and shotguns as well as large-capacity ammunition magazines that are capable of accepting more than 10 rounds of ammunition. APHA has long-supported the reinstatement and strengthening of the 1994 assault weapons ban and we stand ready to work with you, President Obama and all members of Congress to pass this and other important legislation to protect our nation's children and their families from the growing epidemic of gun violence.

Gun violence is one of the leading causes of preventable death in our country and we must take a comprehensive public health approach to addressing this growing crisis. For too long we as a nation have failed to take on this devastating problem in our communities and we can wait no longer. The weapons and ammunition magazines that would be banned under your legislation are not suitable for hunting, collecting or self-defense, but are meant for military combat and have no place on our streets or in our homes.

Thank you again for your ongoing commitment to protecting the public from gun violence. We look forward to working with you to advance this and other common-sense measures to reduce the toll of gun violence in the United States.

Sincerely,

Georges C. Benjamin, MD, FACP, FACEP (E)  
Executive Director



**Arizona --- People Acting for a Safer Society**

[www.azpass.org](http://www.azpass.org)

The Honorable Jeff Flake  
United States Senator

VIA FACSIMILE  
B85 Russell Senate Office Building  
Washington, DC 20510  
(202) 228-0515

VIA U.S. MAIL  
2200 E. Camelback Road  
Suite 120  
Phoenix, Arizona 85016

Dear Senator Flake:

AZPASS, Arizona People Acting for a Safer Society, is a group of concerned citizens in the Phoenix metropolitan area who have joined together to demand legislative action to reduce gun violence. The group was formed this year as consequence of an overwhelming response to my on-line petition to ban assault weapons. **There are now over 120,000 signers on the petition.** You can learn more about AZPASS at our website, [www.azpass.org](http://www.azpass.org).

**We are asking you to support the legislation sponsored by Senator Dianne Feinstein, the Assault Weapons Ban of 2013, S. 150, which lists and bans 150 specific assault weapons. The legislation bans the sale, transfer, manufacturing and importation of:**

- All semiautomatic rifles that can accept a detachable magazine and have at least one military feature: pistol grip; forward grip; folding, telescoping, or detachable stock; grenade launcher or rocket launcher; barrel shroud; or threaded barrel.
- All semiautomatic pistols that can accept a detachable magazine and have at least one military feature: threaded barrel; second pistol grip; barrel shroud; capacity to accept a detachable magazine at some location outside of the pistol grip; or semiautomatic version of an automatic firearm.
- All semiautomatic rifles and handguns that have a fixed magazine with the capacity to accept more than 10 rounds.
- All semiautomatic shotguns that have a folding, telescoping, or detachable stock; pistol grip; fixed magazine with the capacity to accept more than 5 rounds; ability to accept a detachable magazine; forward grip; grenade launcher or rocket launcher; or shotgun with a revolving cylinder.
- All ammunition feeding devices (magazines, strips, and drums) capable of accepting more than 10 rounds.



- 157 specifically-named firearms

This law represents a sensible balance between individual freedom and public safety. The fact that this bill does not ban ownership of existing weapons is not a reason to oppose it – it is rather a reason to support this reasonable compromise. We strongly agree with late President Reagan's position that assault rifles and assault pistols with high capacity magazines are not needed for sport shooting or home defense. But they can be used to kill many, many innocent law-abiding people in minutes. These weapons were used in the Tucson, Aurora, and Sandy Hook shootings. In Tucson, Jared Laughner was wrestled to the ground when he stopped to reload his Glock 19 semi-automatic pistol with a 33 round clip. In Aurora, James Holmes did not have to reload because he had a 100 round clip on his AR-15 and was able to wound 58 and kill 12 people in less than 4 minutes. Studies have shown a link between the use of these weapons and the number of people killed. Passing this bill will not prevent all such crimes, but the law may make the next shooting less lethal.

**We are also asking you to support legislation requiring backgrounds for all gun purchases when that bill is finalized.**

We would also like a time to meet and discuss this legislation as well as other proposed legislation to make our schools and communities safer from gun violence.

Please voice your support and vote for this legislation before Arizona or another state in our great country experiences another mass murder carried out with one of these weapons. You have the power and the obligation to make our state and country safer and more civil.

Thank you for your time and consideration in this matter.

Sincerely,



Ellen B. Davis  
Chair of AZPASS

# Black American Political Association of California



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December 17, 2012

The Honorable U.S. Senator Dianne Feinstein  
 331 Hart Senate Office Building  
 Washington, D.C. 20510

Dear Senator Dianne Feinstein,

We are living in critical times. The gun violence in this Country has become an epidemic that is crippling our Nation. It is the most challenging event that is going on all over the Country and it needs to be addressed immediately. It is not something that we can continue to dialog about, the Country needs to act now. We are therefore calling up on you to reintroduce your assault weapons ban. We have the examples of today's shooting, shopping centers, religious institutions, elected officials and law enforcement that are being gunned down. Today the Nation is hurting. A disturbed gunman took the lives of many innocent children. Our educational institutions are now in threat and our children are the target.

We are calling upon you and your colleagues to act swiftly and pass sensible gun control legislation. There is no doubt your assault weapon legislation was an effective tool to stop the spread of assault weapons. Along with thousands of others, we are convinced if reenacted it would help prevent such senseless gun shootings as we saw in Connecticut.

We need your leadership to stand with strong conviction on this issue and to act quickly to prevent future tragedies. You can count on the support of the Black American Political Association of California (BAPAC) and National Association for the Advancement of Colored People (NAACP) to assist you in every way.

Sincerely yours,

Alice Huffman & Beata Draga,  
 President, NAACP Executive Director & CEO, BAPAC

34th ANNIVERSARY - 2012  
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## CITY OF BEVERLY HILLS

455 NORTH REXFORD DRIVE • BEVERLY HILLS, CALIFORNIA 90210  
13 JAN 24 PM 3:00

VIP-JONATHAN T.

January 11, 2013

The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the City of Beverly Hills, the City Council and the residents we represent, I want to commend you for your congressional leadership in championing gun control legislation that will help protect our children, families and communities from military-style assault weapons that have only one purpose – to kill people. The horrific slaughter of elementary school children in Newtown, Connecticut is an affront to the moral fabric of our society and puts in sharp relief the urgent need to enact sensible, federal gun control legislation that puts an end to this madness.

We have followed with great interest your recent comments highlighting your plan to introduce a bill to ban the sale and transfer of semiautomatic weapons and large capacity magazines. Banning large-capacity ammunition clips capable of accepting more than 10 rounds, as you propose, is a necessary first step. A mandatory background check for owners of grandfathered weapons makes sense as well. Moreover, prohibiting the sale, transfer, importation or manufacture of 120 specifically-named firearms that pose the greatest threat to our communities is, at its core, the foundation of good gun control law. Therefore, we applaud and wholeheartedly endorse this critically important initiative.

Your legislative proposal is a key part of any long-term solution Congress must adopt if we are to end the plague of gun violence that threatens the lives of far too many of our fellow citizens. While the causes of gun violence are both complex and multifaceted, our national leaders must have the political courage to say enough is enough. The time for decisive and deliberate action is now.

The City of Beverly Hills enthusiastically embraces your bill. We look forward to working with you to ensure its enactment into law.

Sincerely,

William W. Briën, M.D.  
Mayor, City of Beverly Hills

CC: City Council  
City Manager, Jeff C. Kohn  
Police Chief, David L. Snowden

To Whom It May Concern:

I am writing to you as a concerned taxpayer and registered Connecticut voter. I strongly appose, all of the proposals that put further restrictions, of any kind on legal firearms owners, or infringe on the United States Constitution. Legal firearms owners should not be punished due to one deranged individuals actions.

Legal firearms owners are not the concern of this committee. The focus for this committee is to find a better way to prosecute those who ignore the law and hurt others in our society. The proposed laws to restrict firearms in Connecticut will only lead to making current owner's criminals. These new laws will not stop those who wish to infringe on the safety of others.

In my opinion, our justice system is failing more than the current state firearm laws. We need to do away with plea bargains and reduced jail time. We need a set level of justice that gives mandatory incarceration time for set crimes. If more prisons need to be built to accommodate this action so be it. We also need to bring back and use the death penalty. I truly believe in an eye for an eye. Since the state of Connecticut likes to lead the way this is how the death penalty should be used. You get one trial if you are found guilty you get one appeal within one year. If you lose this appeal you are executed within five days.


We were all touched by the tragedy in Newtown, but we cannot solve any problems with a knee jerk reaction to such a tragedy. You should also not be influenced by a community that is in mourning, as our state has more than one town. Remember you are in a position to represent ALL residents of Connecticut.

In closing, I would like to inform you that I send my entire family into schools Monday through Friday. I have two children that attend school in North Haven and my wife is a teacher in a school only miles from Sandy Hook Elementary School. Their safety is my number one priority. So, I would ask that this committee collectively introduce ways to protect ALL residents of Connecticut without infringing on law abiding firearms owners or the United States Constitution.

Thank you for your time and consideration.

Sincerely,

Bill Barbour  
North Haven, CT





## BOSTON CITY COUNCIL

www.cityofboston.gov/citycouncil  
city.council@cityofboston.gov

VIP- JONATHAN T.

One City Hall Square ♦ 5<sup>th</sup> Floor ♦ Boston, MA 02201 ♦ Phone: (617) 635-3040 ♦ Fax: (617) 635-4203

December 19, 2012

Honorable Dianne Feinstein

United States Senate

331 Hart Senate Office Building

Washington, D.C. 20510

12 DEC 31 PM 3:58

Dear Senator Feinstein:


The undersigned members of the Boston City Council offer their full support to your proposal to renew a federal assault weapons ban and to include prohibitions on other high-capacity magazines. We thank you for your continued efforts towards this common-sense policy goal and stand firmly behind your forthcoming legislation. Our City Council and Mayor Thomas Menino are dedicated to strengthening gun safety laws and ensuring that no man, woman or child in Boston or beyond becomes the victim of a crime perpetuated through the use of an assault weapon.

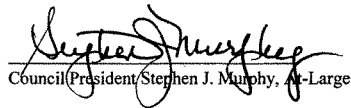
The issue of gun control and gun violence is one that is faced on a daily basis in Boston and other municipalities throughout the country. Even in places like Massachusetts, where we have some of the toughest gun laws and second-lowest gun death rate in the nation, the absence of stronger federal protections jeopardizes the advances made by local efforts. Authorities in Massachusetts recovered 1,737 firearms used in crimes in 2011 and nearly two-thirds of those weapons originated outside our state. Often the guns procured for these crimes are obtained through the legal loopholes our laws have failed to address.

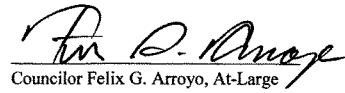
As has been well-publicized, six of the twelve deadliest shootings in the U.S. have occurred since 2007, including the horrific event that took place last week in Newtown, Connecticut. Locally, Boston has seen its own dramatic rise in the use of guns to perpetrate homicides – now used in more than 85% of homicides in our City, up from 40% in the mid-1970s and up nearly 20% since the last federal assault weapons ban ended in 2004.

The time has certainly come to take a strong stand against the sale and ownership of the type of weapons that have led to the senseless death of so many of our fellow citizens. We must do all we can to ensure people feel safe not only in our malls, movie theaters, and grocery stores, but especially in our homes, schools, and places of worship.

We applaud your efforts and wish to give our support for the purposes of this legislation's passing.

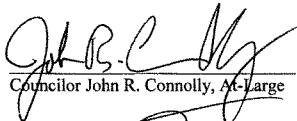
  
Signed Michael P. Ross  
Chair of Public Safety Committee

  
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Councilor Felix G. Arroyo, At-Large

  
Councilor Frank Baker, District 3

  
Councilor Mark Ciommo, District 9

  
Councilor John R. Connolly, At-Large

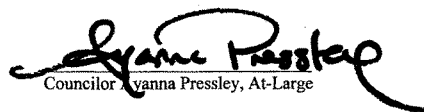
  
Councilor Rob Consalvo, District 5

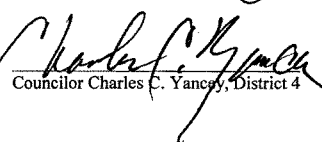
  
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**CALIFORNIA  
TEACHERS  
ASSOCIATION**

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phone 650.697.1400 // fax 650.552.5007

February 4, 2013

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Bldg.  
Washington, DC 20510

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Executive Director  
Carolyn Doggett

Dear Senator Feinstein:

The 325,000 members of the California Teachers Association have taken a support position on your proposed legislation to ban assault weapons and high-capacity magazines and took further action to oppose any efforts to arm educators across the state.

Our members adamantly believe we owe it to our students to make California's public schools safer and even more secure. Your proposal is a big step in ensuring we can provide a safer environment for all students. Additionally, we vehemently oppose the NRA's proposal to arm teachers. That's a preposterous, cynical and unworkable solution to violence in our schools. Instead of arming teachers, California needs more school counselors, more access for students to mental health services, safer facilities, and more training for educators to spot the mental health needs of students and bullying or other at-risk behaviors.

While California leads the nation in the regulation of handguns and controls placed on gun shows, it is not enough. The enormous proliferation of full and semiautomatic firearms places all of our citizens at risk. Additional consideration should be given that requires gun owners to register their firearms, successfully complete gun safety training, and to obtain insurance coverage to further guarantee the safety of all Americans as part of a multi-pronged approach.

There is overwhelming support across the nation to focus on school safety and back gun violence prevention laws. Now is the time and we are thrilled to join you in this valiant effort. Thank you on behalf of California's educators and students for taking this great step toward preventing further tragedies from devastating our communities.

Sincerely,

Dean E. Vogel, President  
California Teachers Association

DV:dac

cc: Eric C. Heins  
Mikki Cichocki  
CTA Board of Directors  
Carolyn Doggett



[www.cta.org](http://www.cta.org)



Prince William County Alliance to End Gun Violence

Marilyn Karp

Email: [REDACTED]

The Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Human Rights  
Chairman Dick Durbin

March 5, 2013,

Dear Senate Judiciary Committee Members:

Thank you for allowing me the opportunity to submit written testimony for the Senate Judiciary Hearing on the Assault Weapons Ban. As the leader of the Prince William County Alliance to End Gun Violence, I am speaking on behalf of all of our members. We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights.

1) Require Universal Background Checks on both Guns and Ammunition

Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban

Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with



magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

### 3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

### 4) Improve Mental Health Reporting

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as “mental defectives” (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above and legislation already put forth in this Congress that echo recommendations made the President’s task force would be simple and immediate steps that would help bring an end to gun violence.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is unacceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer’s bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into

a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now.

Most respectfully,

Marilyn Karp  
Leader  
Prince William County Alliance to End Gun Violence



**California Medical Association**  
*Physicians dedicated to the health of Californians*

#### IMPROVING ACCESS TO HEALTH CARE

#### **THANK YOU FOR STOPPING THE 26.5% MEDICARE PHYSICIAN PAYMENT CUT**

#### **PLEASE STOP THE 2% MEDICARE SEQUESTRATION BUDGET CUTS**

While CMA supports the need to address our nation's budget deficit, we urge a more targeted approach to protect Graduate Medical Education (GME) which trains physicians to meet California's growing health care needs; physician payment which already lags 20% behind practice cost inflation; public health, the CDC, FDA and NIH. These cuts will exacerbate patient access to care problems. Medicare spending has decelerated to the lowest levels in decades (~2%) and slowed more than other health sectors which suggests a structural slowdown. Therefore, CMA urges Congress to target reforms to meet our commitments to patients.

#### **UPDATE THE MEDICARE PAYMENT REGIONS TO IMPROVE ACCESS TO CARE**

As recommended by the IOM, GAO, and others, CMA urges Congress to update the Medicare physician payment regions to Metropolitan Statistical Areas (MSAs) consistent with the way Medicare organizes and pays hospitals. While the Hospital MSA regions are updated annually, the physician regions have not been updated since 1997. Thus, 14 urban California counties (including San Diego and Sacramento) are still designated as rural and physicians in these counties are underpaid by up to 14 percent/year. It is causing physician shortages and access to care problems. **Support the Feinstein-Farr-Issa budget neutral California "GPCI" Pilot.**

#### **ADOPT LONG-TERM MEDICARE PAYMENT REFORM**

CMA, AMA, and organized medicine are working together to develop an alternative Medicare payment system to present to Congress. Physicians are leading the way with a stable payment system that promotes quality and value. The plan would eliminate the currently flawed SGR payment formula. CBO has reduced the cost of SGR repeal from \$238 billion to \$138 billion. Now is the time! The plan would provide a menu of payment methods and health delivery models from which physicians could choose to participate, such as primary care medical homes and patient registries to track outcomes. These programs would **REALIGN INCENTIVES** and encourage physicians to collaborate, coordinate care, improve efficiency, and promote quality.

#### **SUPPORT SENATOR FEINSTEIN'S BAN ON ASSAULT WEAPONS- S. 150**

S. 150 would reinstate and strengthen the expired 1994 assault weapons ban and limit the availability of high capacity semi-automatic weapons. It also bans the importation of such weapons. CMA applauds Senator Feinstein and supports other efforts to deter gun violence, including bolstering access to mental health care services.

#### **IMMIGRATION REFORM: BRING DOCTORS TO CA'S UNDERSERVED AREAS**

CMA urges Congress to expand the number of J-1 VISA Waiver foreign physicians who are licensed and receive graduate training in the U.S. to remain in the U.S. and care for patients in our underserved areas. These physicians must have employment and serve for 3 years. There is virtually no cost to the federal government. California has substantial physician shortages and needs such doctors to meet our growing health care needs. Include in Immigration Reform.

**MEET THE FUTURE DEMANDS FOR HEALTH CARE: LIFT THE CAP ON GRADUATE MEDICAL EDUCATION (GME) RESIDENCY POSITIONS**

Workforce experts predict that the U.S. will face a shortage of 62,900 physicians in 2015. California is already experiencing significant shortages. While medical schools are expanding enrollment to meet future needs, GME residency training positions are capped by federal law. As a result, medical school graduates will exceed the number of available residency slots by 2015. Medical residents train at facilities that provide a disproportionate share of the care to veterans, the medically indigent, and elderly. Please retain funding for Graduate Medical Education and lift the cap on training programs to meet our current and future needs.

**COMBATING PRESCRIPTION DRUG ABUSE**

Prescription drug abuse, diversion, overdose and death have reached epidemic levels across the U.S. CMA urges reauthorization and full funding of the national All Schedules Prescription Electronic Reporting Act (NASPER). The program is called CURES in CA and it is an important tool to help physicians identify patients who are abusing or diverting prescription drugs. However, more needs to be done to provide real-time information that is readily available at the point of care. See the attached AMA hand-out for more comprehensive recommendations.

**SUPPORT MEDICARE PRIVATE CONTRACTING**

CMA urges Congress to allow Medicare seniors to see the physician of their choice. California seniors report difficulty finding physicians who are taking new Medicare patients. This model would allow seniors to voluntarily enter into private contracts with a physician. It would stipulate that Medicare pay for its fair share of the services and allow patients, who voluntarily agree, to pay the rest. Under current law, seniors who wish to privately contract with a physician must forego their Medicare benefits and physicians must opt-out of Medicare entirely for two years. This allows more physicians to remain accessible at no additional cost to the government.

**HEALTH CARE REFORM IMPLEMENTATION IN CALIFORNIA**

While CMA supports the expansion of insurance coverage for California's uninsured, we remain concerned that patients may not have access to a physician who can care for them when they become injured or ill. **More needs to be done to address the access to care barriers.**

**Medi-Cal Expansion:** California's Medi-Cal physician rates are at least 50% below Medicare; 2/3 of physicians cannot afford to participate and thus, half of Medi-Cal patients report difficulty finding a physician. Congress must address these issues to ensure access to doctors for the uninsured. Otherwise, patients will delay care and end up in the ER with difficult and expensive complications. We appreciate the ACA's rate increase for primary care services in 2013-2014. It will result in a >150% physician rate increase and help to retain physicians in the program.

**Health Benefit Exchange:** CMA is concerned that the health plans in the Exchange will not have adequate physician networks to meet the needs of the uninsured who enroll in plans. We urge more aggressive monitoring of health plans to ensure patients are able to access physicians.

**Medicare-Medicaid Dual Eligible Demonstration:** CMA continues to urge that it be scaled back, that existing physician-patient relationships be maintained to the extent possible, and there be a massive enrollment education campaign to protect continuity of care for these vulnerable patients and their physicians.

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** SB 150  
**Date:** Tuesday, February 26, 2013 11:38:43 PM

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Greetings!

My name is Kelly Cunningham and am an Ohioan. I most certainly support SB 150, Senator Feinstein's bill to ban assault weapons and high capacity magazine and demand a vote! Please listen and help end gun violence.

Thank you.



The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein,

For nearly a century, CWLA has lead the child welfare field and engaged its network of public and private agencies and partners to advance policies, best practices and collaborative strategies that result in better outcomes for vulnerable children, youth and families. In light of the tragic events that have led the nation and our President to reconsider our priorities with respect to addressing gun violence as it relates to the safety of our young people, you recently introduced a bill that would stop the sale, transfer, importation and manufacturing of assault weapons as well as large ammunition magazines, strips and drums that hold more than ten rounds. CWLA would like to extend our support for the bill and are delighted that you are taking steps towards addressing an issue where reform is long overdue.

Gun violence represents a major threat to the health and safety of everyone in the United States, particularly children and teens. According to the most recent data, every thirty minutes a child or teen dies or is injured from gun violence. In 2010, 2,694 children and teens died from gunfire. As we work to frame the national agenda for the reduction of youth gun violence and victimization, our charge is to support strategies that move us toward achieving the goal of reducing the number of children, youth and families affected by gun violence and victimization, and ultimately prevent this violence. We believe that placing restrictions on the manufacture and sale of automatic weapons and bullet clips are essential components of a comprehensive and strategic approach to violence reduction and control.

Moving forward we also offer our knowledge and expertise in the area of mental health services and treatment for children and youth, which President Obama pointed to in his most recent proposal to combat gun violence as a much needed area to address. Improving access to mental health services and treatment is particularly important for children and youth in and at-risk of entering the child welfare system since the majority of youth entering care have diagnosable mental health disorders, but less than half of them receive treatment for their illness.

We thank you for your leadership on this important matter and look forward to working with you in the coming months to seriously address the safety as well as the physical, behavioral, and mental health needs of vulnerable children and youth as it relates to combating gun violence.

Sincerely,

A handwritten signature in cursive script that reads "Christine James-Brown".

Christine James-Brown  
President/CEO

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Testimony in Support of S.150, the Assault Weapons Ban of 2013  
**Date:** Wednesday, March 06, 2013 4:58:21 PM

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Dear members of the Senate Judiciary Committee,

On February 27th, I traveled to Washington with over two dozen of my neighbors from Newtown, Connecticut to express my support for Senator Feinstein's proposed legislation to update and reinstate a ban on assault weapons (S. 150). I'm writing to reiterate my support for this legislation.

During the hearing, we watched a short clip of a man firing an AR-15 with a bump fire stock. There is no practical distinction between the rate of fire produced by this weapon and that produced by a fully automatic machine gun. While one weapon is clearly illegal, the other is legal because the outdated words used to describe it suggest a distinction that no longer exists. This dangerous inconsistency has essentially undermined existing law, putting the practical equivalent of banned weapons back on our streets.

The result has been devastating for our community and too many like it across the country. Legally, logically, and morally, your obligation is clear: we need you to take action now. Please support S. 150 and the other legislation being considered by the Judiciary Committee to reduce the horrible damage weapons like these inflict on our communities.

Sincerely,

Paul and Noelle D'Agostino  
 Newtown, Connecticut



City of  
Encinitas

VIP-JONATHAN

Office of  
The Mayor

FEB 13 PM 2:40

SENATOR FEINSTEIN  
WASHINGTON, D.C.

January 31, 2013

Teresa Arballo Barth  
Mayor

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Office Building  
Washington, D. C. 20510

**RE: S.150 (Feinstein) Assault Weapons Ban  
Resolution of Support**

Lisa Shaffer  
Deputy Mayor

Dear Senator Feinstein:

Kristin Gaspar  
Council Member

On January 30, 2013 the City Council of the City of Encinitas, California unanimously resolved to support the reinstatement of the Federal Assault Weapons Ban, bill S.150 (Feinstein) of the 113<sup>th</sup> Congress.

A copy of the resolution of support is attached. Thank you for introducing this common-sense bill.

Tony Kranz  
Council Member

Sincerely,

Teresa Arballo Barth  
Mayor

Mark Muir  
Council Member

Attachment.

cc: City Council  
City Manager

Gus Vina  
City Manager



**RESOLUTION 2013-03**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS,  
CALIFORNIA SUPPORTING THE REINSTATEMENT OF THE FEDERAL  
ASSAULT WEAPONS BAN; A BAN ON THE SALE, TRANSFER,  
IMPORTATION, OR MANUFACTURING OF MILITARY-STYLE ASSAULT  
WEAPONS AND LARGE-CAPACITY AMMUNITION FEEDING DEVICES;  
AND CALLING ON THE CALIFORNIA CONGRESSIONAL DELEGATION TO  
SUPPORT LEGISLATION PROPOSED BY U.S. SENATOR DIANNE  
FEINSTEIN TO IMPLEMENT THESE MEASURES**

**WHEREAS**, in 1994, Congress enacted an assault weapons ban that prohibited the sale of certain semi-automatic weapons in order to reduce levels of violence in the United States; and

**WHEREAS**, in 2004, the assault weapons ban expired by operation of law and, to this date, has not been renewed by Congress; and

**WHEREAS**, since the 2004 expiration of the ban, assault weapons have been used in at least 459 incidents, resulting in 385 deaths and 455 injuries; and,

**WHEREAS**, in recent years random, mass gun violence has made the names of communities such as Tucson, Arizona, Aurora, Colorado, Virginia Tech, and Newtown, Connecticut synonymous with senseless loss of life and severe injuries; and

**WHEREAS**, weapons of war do not belong on our streets, in our theaters, shopping malls and, most of all, our schools; and

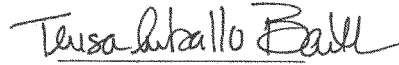
**WHEREAS**, U.S. Senator Dianne Feinstein has introduced legislation to reinstate and strengthen the assault weapons ban that she sponsored in 1994 while protecting the rights of legitimate hunters and existing gun owners ;

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of Encinitas, California that:

1. The City of Encinitas supports Senator Feinstein's assault weapons ban legislation.
2. The City Council authorizes the City Clerk to forward this Resolution to the California Congressional delegation of the 113<sup>th</sup> Congress.
3. The City Council hereby authorizes City staff to monitor this Legislation and report back to the City Council at appropriate intervals regarding the progress of this legislation.
4. The California delegation of the 113<sup>th</sup> Congress be urged to consider a federal assault weapons ban as the first step in addressing violence in our communities.

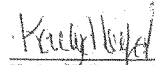
PASSED AND ADOPTED this 30th day of January, 2013.

AYES: Barth, Gaspar, Kranz, Muir, Shaffer.  
NAYS: None.  
ABSTAIN: None.  
ABSENT: None.



Teresa Arballo Barth, Mayor  
City of Encinitas

ATTEST:



Kathy Hollywood, City Clerk

**Endorsements for the Assault Weapons Ban of 2013**

• **Law Enforcement**

- International Association of Campus Law Enforcement Administrators
- International Association of Chiefs of Police
- Major Cities Chiefs Association
- National Association of Women Law Enforcement Executives
- National Law Enforcement Partnership to Prevent Gun Violence
- National Organization of Black Law Enforcement Executives
- Police Executive Research Forum
- Police Foundation
- Women in Federal Law Enforcement
- Chaska, Minn. Chief of Police Scott Knight, former chairman of the Firearms Committee, International Association of Chiefs of Police
- Los Angeles County Sheriff Lee Baca
- Los Angeles Police Chief Charlie Beck
- San Diego Police Chief Bill Lansdowne

• **Localities**

- U.S. Conference of Mayors
- National League of Cities
- Boston City Council
- Los Angeles County Board of Supervisors
- Oakland Unified School District Superintendent Anthony Smith
- San Francisco Board of Supervisors
- San Luis Obispo County Supervisor Bruce Gibson
- Ventura County Board of Supervisors

*California Mayors*

- Alameda Mayor Amanda Gilmore
- Chula Vista Mayor Cheryl Cox
- Long Beach Mayor Bob Foster
- Los Angeles Mayor Antonio R. Villaraigosa
- Martinez Mayor Rob Schroder
- Morro Bay former Mayor Janice Peters
- Oakland Mayor Jean Quan
- Orange Cove Mayor Gabriel Jimenez

- Petaluma Mayor David Glass
- Pleasant Hill Mayor Michael Harris
- Sacramento Mayor Kevin Johnson
- San Diego Mayor Bob Filner
- San Francisco Mayor Edwin M. Lee
- San Jose Mayor Chuck Reed
- San Luis Obispo Mayor Jan Marx
- Santa Ana Mayor Miguel Pulido
- Santa Barbara Mayor Helene Schneider
- Santa Cruz Mayor Hilary Bryant
- Saratoga Mayor Jill Hunter
- Tiburon Mayor Emmett O'Donnell

*California Cities*

- Beverly Hills
- Calabasas
- Chula Vista
- Del Mar
- Encinitas
- Lemon Grove
- Los Angeles
- National City
- Petaluma
- San Francisco
- Santa Rosa
- Stockton
- Ventura
- West Hollywood

● **Gun Safety**

- Arizonans for Gun Safety
- Arizona People Acting for a Safer Society
- Brady Campaign to Prevent Gun Violence
- Ceasefire Oregon
- Coalition to Stop Gun Violence
- Hoosiers Concerned About Gun Violence
- Illinois Council Against Handgun Violence
- Law Center to Prevent Gun Violence

- Mayors Against Illegal Guns
- Ohio Coalition Against Gun Violence
- Moms Demand Action for Gun Sense in America
- Protect Minnesota
- StopOurShootings.org
- Violence Policy Center
- Washington Ceasefire
- Wisconsin Anti-Violence Effort
- Women Against Gun Violence

- **Education / Child Welfare**

- 20 Children
- American Federation of Teachers
- California PTA
- California Teachers Association
- Child Welfare League of America
- Children's Defense Fund
- Every Child Matters
- Los Angeles Community College District
- MomsRising
- National Association of Social Workers
- National PTA
- National Education Association
- San Diego Unified School District
- Save the Children
- United States Student Association

- **Religious**

- African Methodist Episcopal Church
- Alliance of Baptists
- American Baptist Churches of the South
- American Baptist Home Mission Societies
- American Friends Service Committee
- Baptist Peace Fellowship of North America
- Camp Brotherhood
- Catholic Charities USA
- Catholic Health Association
- Catholic Health Initiatives

- Catholics in Alliance for the Common Good
- Catholics United
- Church of the Brethren
- Church Women United, Inc.
- Conference of Major Superiors of Men
- Disciples Home Missions, Christian Church (Disciples of Christ)
- Dominican Sisters of Peace
- Faiths United To Prevent Gun Violence
- Franciscan Action Network
- Friends Committee on National Legislation
- Health Ministries Association
- Heeding God's Call
- Hindu American Foundation
- Interfaith Alliance of Idaho
- Islamic Society of North America
- Jewish Council for Public Affairs
- Jewish Reconstructionist Movement
- Leadership Conference of Women Religious
- Mennonite Central Committee, Washington Office
- National Advocacy Center of the Sisters of the Good Shepherd
- National Council of Churches
- National Episcopal Health Ministries
- NETWORK, A National Catholic Social Justice Lobby
- Pathways Faith Community
- Pax Christi USA
- PICO Network Lifelines to Healing
- Presbyterian Church (U.S.A.) Office of Public Witness
- Progressive National Baptist Convention
- Rabbinical Assembly
- Religious Action Center of Reform Judaism
- San Francisco Interfaith Council
- Sikh Council on Religion and Education, USA
- Sisters of Mercy of the Americas
- Sojourners
- Unitarian Universalist Association of Congregations
- United Church of Christ
- United Methodist Church
- United Methodist Women
- United States Conference of Catholic Bishops Committee on Domestic Justice and Human Development

- United Synagogue of Conservative Judaism
- Washington National Cathedral
- Women of Reform Judaism

• **Health care**

- American Academy of Nursing
- American Academy of Pediatrics
- American College of Surgeons
- American Congress of Obstetricians and Gynecologists
- American Medical Association
- American Public Health Association
- California Medical Association
- Doctors for America
- National Association of School Nurses
- National Physicians Alliance
- Physicians for Social Responsibility
- San Francisco Mental Health Association
- Society for the Advancement of Violence and Injury Research

• **Other**

- Alliance for Business Leadership
- American Bar Association
- Black American Political Association of California
- Center For American Progress Action Fund
- Grandmothers for Peace International
- National Parks Conservation Association
- Precision Remotes
- Sierra Club
- TASH
- VoteVets.org
- Washington Office on Latin America

• **Former Elected Officials**

- Former California Governor Deukmejian
- Former Secretary of the Department of Homeland Security Tom Ridge

## Faiths United To Prevent Gun Violence

United Methodist Building, 100 Maryland Avenue, N.E., Washington, DC

January 15, 2013

Dear Member of Congress:

On Martin Luther King Day, January 17, 2011, 24 national faith groups announced the formation of "Faiths United to Prevent Gun Violence," a diverse coalition of denominations and faith-based organizations united by the call of our faiths to confront America's gun violence epidemic and to rally support for policies that reduce death and injury from gunfire. Two years later, we have grown to more than 40 groups representing tens of millions of Americans in faith communities across the nation – and our call to confront this epidemic has grown ever more urgent and imperative.

The recent loss in Connecticut of 20 innocent young children, of the teachers and administrators that cared for them, and of a desperately troubled young man and his mother, tears our hearts and minds to the core. Faith leaders in Newtown have been on the front line of responding to the grief and pain of the families whose loss is unimaginable, and of the entire community there. Across the country, we grieve with our own congregants and communities, and we share their determination to do all within our power to ensure that this never happens again.

In light of the tragedy in Newtown – and in Aurora, Tucson, Fort Hood, Virginia Tech, Columbine, Oak Creek, and so many more – we know that no more time can be wasted. Gun violence is taking an unacceptable toll on our society, in mass killings and in the constant day-to-day of senseless death. While we continue to pray for the families and friends of those who died, we must also support our prayers with action. We should do everything possible to keep guns out of the hands of people who may harm themselves or others. We should not allow firepower to kill large numbers of people in seconds anywhere in our civil society. And we should ensure that law enforcement has the tools it needs to stop the virtually unrestrained trafficking of guns.

Faiths United to Prevent Gun Violence member organizations, representing millions of people across the country, urge you to respond to this crisis in our nation. With each day that goes by, dozens more of our children, parents, brothers, and sisters are lost to gun violence. We support immediate legislative action to accomplish the following:

- **Every person who buys a gun should pass a criminal background check.** Preventing dangerous people from getting firearms has to be a top priority. Universal background checks via the National Instant Criminal Background Check System (NICS) should be utilized in every gun sale, including guns sold online, at gun shows, and through private sales.
- **High-capacity weapons and ammunition magazines should not be available to civilians.** There is no legitimate self-defense or sporting purpose for these military-style, high-capacity weapons and magazines. They are, however, the weapons of choice for those who want to shoot and kill a large amount of people quickly. It's time to build off of the federal assault weapons ban that expired in 2004 and draft an updated law that will take these weapons off our streets.
- **Gun trafficking should be made a federal crime.** Currently, prosecutions only happen through a law that prohibits selling guns without a federal license, which carries the same punishment as trafficking chicken or livestock. We must empower law enforcement to investigate and prosecute straw purchasers, gun traffickers, and their entire criminal networks.



In recent weeks, the American people have come together in a national outpouring of grief and sympathy for the families of victims slain in the mass shooting in Newtown. We share in that grief, but will not let it substitute for action. We look forward to working with you to enact these common-sense measures to reduce gun violence. Should you or your staff have questions or need additional information, please visit our website at [www.faithsagainstgunviolence.org](http://www.faithsagainstgunviolence.org) or contact our National Coordinator, Vincent DeMarco, by email at [demarco@mdinitiative.org](mailto:demarco@mdinitiative.org) or by phone at 410-591-9162.

Sincerely,



James Winkler  
Chair, Faiths United To Prevent Gun Violence  
General Secretary, General Board of Church and Society  
United Methodist Church



Jacquelyn Dupont-Walker, Director, Social Action Commission  
African Methodist Episcopal Church



Carol Blythe, President  
Alliance of Baptists



Dr. Walter L. Parrish, II, Executive Minister  
American Baptist Churches of the South



Dr. Aidsand F. Wright-Riggins III, Executive Director  
American Baptist Home Mission Societies

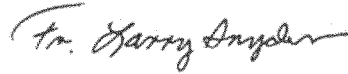


Shan Cretin, General Secretary  
American Friends Service Committee

FAITHS UNITED TO PREVENT GUN VIOLENCE



Rev. LeDayne McLeese Polaski, Program Coordinator  
Baptist Peace Fellowship of North America



Father Larry Snyder, CEO  
Catholic Charities USA



Sister Carol Keehan, D.C., President and CEO  
Catholic Health Association



Kevin E. Lofton, President and CEO  
Catholic Health Initiatives



Fred Rotondaro, Chairman of the Board  
Catholics in Alliance for the Common Good



James Salt, Executive Director  
Catholics United



Stanley J. Noffsinger, General Secretary  
Church of the Brethren



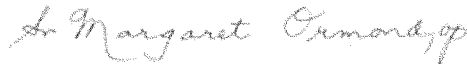
Djamillah Samad, National Executive  
Church Women United, Inc.



Very Rev. John Edmunds ST, President  
Conference of Major Superiors of Men



Rev. Ronald J. Degges  
Disciples Home Missions, Christian Church (Disciples of Christ)



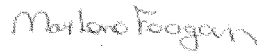
Sr. Margaret Ormond, O.P. and the Leadership Team  
Dominican Sisters of Peace



Patrick Carolan, Executive Director  
Franciscan Action Network



Diane Randall, Executive Secretary  
Friends Committee on National Legislation



Marlene Feagan, President  
Health Ministries Association



Bryan Miller, Executive Director  
*Heeding God's Call*



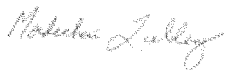
Suhag Shukla  
Executive Director and Legal Counsel  
Hindu American Foundation



Dr. Sayyid M. Syeed, National Director for Interfaith and Community Alliances  
Islamic Society of North America



Rabbi Steve Gutow, President,  
Jewish Council for Public Affairs



Rabbi Mordecai Leibling,  
Jewish Reconstructionist Movement



Janet Mock, CSJ, Executive Director  
Leadership Conference of Women Religious



Rachelle Lyndaker Schlabach, Director  
Mennonite Central Committee, Washington Office

*Sister Gayle Lwanga*  
Sister Gayle Lwanga,  
National Advocacy Center of the Sisters of the Good Shepherd

*Peg Birk*  
Peg Birk, Transitional General Secretary  
National Council of Churches

*Matthew Ellis*  
Matthew Ellis, Executive Director  
National Episcopal Health Ministries

*Simone Campbell, SSS*  
Simone Campbell, SSS, Executive Director  
NETWORK, A National Catholic Social Justice Lobby

*Dr. Patricia Chappell, SNDdeN*  
Patricia Chappell, SNDdeN, Executive Director  
Pax Christi USA

*Michael McBride*  
Pastor Michael McBride, M.Div.,  
PICO Network Lifelines to Healing

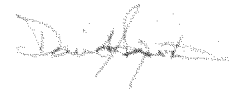
*Herbert Nelson, II*  
Reverend J. Herbert Nelson, II, Director for Public Witness  
Presbyterian Church (U.S.A.) Office of Public Witness



Dr. Carroll Baltimore, President  
Progressive National Baptist Convention



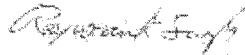
Rabbi Gerald Skolnik,  
Rabbinical Assembly



Rabbi David Saperstein, Director and Counsel  
Religious Action Center of Reform Judaism



Sister Patricia McDermott, RSM, President  
Sisters of Mercy of the Americas



Dr. Rajwant Singh, Chairman  
Sikh Council on Religion and Education, USA



Rev. Jim Wallis, President and CEO  
Sojourners



Rev. Craig C. Roshaven, Witness Ministries Director  
Unitarian Universalist Association of Congregations



Rev. Geoffrey A. Black, General Minister and President  
United Church of Christ



Harriett Jane Olson, CEO and General Secretary  
United Methodist Women



Most Reverend Stephen E. Blaire  
Bishop of Stockton, Chairman  
United States Conference of Catholic Bishops Committee on Domestic Justice and Human Development



Rabbi Steven Wernick, Executive Vice President and CEO  
United Synagogue of Conservative Judaism



The Very Rev. Gary Hall,  
Washington National Cathedral



Rabbi Marla Feldman, Executive Director  
Women of Reform Judaism



**OFFICE OF THE MAYOR**

**Gabriel Jimenez**

**633 6<sup>th</sup> Street, Orange Cove, CA 93646**

**Cell - (559)480-6022 \* City Hall - (559)626-4488 ext. 214 \* Fax: (559)626-2489**

January 28, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

This letter is to express my support of your legislation S. 150, the Assault Weapons Ban, to reinstate the ban military-style assault weapons and large-capacity ammunition feeding devices.

In recent years incidents of mass gun violence, including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, in our shopping malls and theaters, and most of all, in our schools. S. 150 offers a sensible solution that will take these weapons out of our cities and neighborhoods while protecting the rights of legitimate hunters and current gun owners.

I support this common-sense gun safety measure to protect our communities and reduce violence. Please add my name/organization to the list of those endorsing S. 150.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gabriel Jimenez", is written over a faint, circular official stamp.

Gabriel Jimenez, Mayor  
City of Orange Cove



**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Testimony to Support S-150  
**Date:** Wednesday, March 06, 2013 2:06:13 PM

---

Dear Members of the Senate Judiciary Committee:

I am writing to ask you to support S-150-The Assault Weapons and High Capacity Magazine bill and all proposals from lawmakers that will reduce gun violence in our country.

The people's voice is getting louder on this issue. Newtown put the old way of thinking out the door. It's time now to act.

I implore you to support this. Gun owners can have guns, they just need to bear some responsibility and this is that chance.

Respectfully,  
Sylvia Glover

*"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has."—Margaret Mead*



## *Grandmothers for Peace International*

P.O. Box 1292 • Elk Grove, CA 95759 • U.S.A.  
phone: (916) 730-6476 • e-mail: [lorraine@grandmothersforpeace.org](mailto:lorraine@grandmothersforpeace.org) • web: [www.grandmothersforpeace.org](http://www.grandmothersforpeace.org)

---

December 17, 2012

Senator Dianne Feinstein  
331 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Feinstein:

We at Grandmothers for Peace International support your upcoming bill to ban assault weapons.

Our membership is over 1,000 and you will be hearing from them on a single basis also.

Peace to all of us,

Lorraine Krofchok, Director

2012 DEC 31 PM 4:20

# Hoosiers Concerned About Gun Violence

3535 Kessler Boulevard North, Indianapolis, IN 46222 • (317) 636-2388 • info@hcgv.org • www.hcgv.org

2013 FEB -8 PM 1:41

January 30, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

This letter is to express our support of your legislation S. 150, the Assault Weapons Ban, to reinstate the ban military-style assault weapons and large-capacity ammunition feeding devices.

In recent years incidents of mass gun violence, including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, in our shopping malls and theaters, and most of all, in our schools. S.150 offers a sensible solution that will take these weapons out of our cities and neighborhoods while protecting the rights of legitimate hunters and current gun owners. Indiana has been spared such a mass shooting. However, we recognize that without stronger gun laws it could happen here.

We support this common-sense gun safety measure to protect our communities and reduce violence. Please add Hoosiers Concerned About Gun Violence to the list of those endorsing S.150.

Sincerely,

*Stephen R. Dunlop, MD*

Stephen R. Dunlop, M.D.

President, Hoosiers Concerned About Gun Violence

## Board of Directors

Dr. Stephen Dunlop, Rev. Loring Prosser, Marian Towne, Dr. David Mason, William Ney, Joyce Bowman  
Dr. Marilyn Bull, Rev. Roger Heimer, Angela Plank, Repr. Greg Porter, Prof. Brad Yoder, Joe Zelenka



January 23, 2013

The Honorable John Boehner  
United States House of Representatives  
H-232, The Capitol  
Washington, DC 20515

The Honorable Nancy Pelosi  
United States House of Representatives  
235 Cannon HOB  
Washington, DC 20515

The Honorable Mitch McConnell  
United States Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Harry Reid  
United States Senate  
528 Hart Senate Office Building  
Washington, DC 20510

Dear Speaker Boehner, Senate Minority Leader McConnell, House Minority Leader Pelosi and Senate Majority Leader Reid:

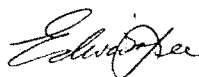
We are writing to express support for Senator Feinstein's Assault Weapons Regulatory Act of 2013 and to urge its prompt passage. The tragedy at Newtown, Connecticut and the swift reaction of President Obama placed an important spotlight on gun safety in America. As mayors of the largest cities in California, we are charged with protecting the safety of our residents. Banning the sale, transfer, import or manufacture of assault weapons – weapons that are disproportionately involved in murders with multiple victims, multiple wounds per victim, and police officers as victims – is a straightforward, common sense measure that will improve the safety of our citizens.

Senator Feinstein's legislation strengthens and improves the 1994 Assault Weapons Ban by moving from a 2-characteristic test to a 1-characteristic test, banning firearms with "bullet buttons" – a loophole exploited in the 1994 ban, and eliminating the 10-year sunset provision that allowed the original ban to expire. This legislation protects legitimate hunters and the rights of existing gun owners by grandfathering weapons legally possessed on the date of enactment and exempting weapons specifically used for hunting and sporting purposes.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200  
SAN FRANCISCO, CALIFORNIA 94102-4681  
TELEPHONE: (415) 554 8144

This proposal, in combination with the significant measures initiated by President Obama last week, will make a measurable impact and go far to protect the safety of all Americans. We appreciate President Obama and Senator Feinstein's leadership on this important issue and urge your support.

Very truly yours,



EDWIN M. LEE  
Mayor – San Francisco



ANTONIO R. VILLARAIGOSA  
Mayor – Los Angeles

KEVIN JOHNSON  
Mayor – Sacramento



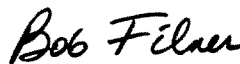
CHUCK REED  
Mayor – San Jose



BOB FOSTER  
Mayor – Long Beach



JEAN QUAN  
Mayor – Oakland



BOB FILNER  
Mayor – San Diego



MIGUEL PULIDO  
Mayor – Santa Ana

cc: Senator Dianne Feinstein  
Senator Barbara Boxer  
Valerie Jarrett, Senior Advisor to the President  
David Agnew, Director of Intergovernmental Affairs,  
Members, California Delegation, United States House of Representatives

VIP- Jonathan



## LOS ANGELES COMMUNITY COLLEGE DISTRICT

OFFICE OF THE CHANCELLOR

 FEB 13 AM 11:01  
 SENATOR FEINSTEIN  
 WASHINGTON, D.C.

February 5, 2013

The Honorable Dianne Feinstein  
 United States Senate  
 331 Hart Senate Office Building  
 Washington D.C. 20510

Dear Senator Feinstein:


I am pleased to let you know that the Los Angeles Community College District Board of Trustees voted unanimously to support the *Assault Weapons Ban of 2013* at its January 30<sup>th</sup>, 2013 Board meeting, as noted in the attached resolution. You will see that two state bills pertaining to assault weapons and ammunition, by Senator Yee and Senator de León, are cited in the resolution as well.

The LACCD trustees and I applaud your efforts to address gun violence which has been a crisis in inner city communities for decades and, with respect to mass shootings, has become an alarming national problem. There is little evidence that any of this gun violence will be reduced without aggressive legislative action. Certainly, the college presidents and I have heightened concerns in terms of our preparedness for such an incident, should it occur on one of our campuses. In fact, we are reviewing our emergency response processes as a consequence of recent events.

Please know that we are very grateful to you for taking the lead on this very critical issue.

Best Regards,

Daniel J. LaVista, Ph.D.  
 Chancellor

	<b>Board of Trustees</b>		<b>ACTION</b>
	Los Angeles Community College District		
Com. No. BT3	Division	Board of Trustees	Date: January 30, 2013

Subject: **RESOLUTION IN SUPPORT OF A COMPREHENSIVE FEDERAL AND STATE OF CALIFORNIA BAN ON ASSAULT WEAPONS AND REGULATION OF AMMUNITION**

The following resolution is presented by Trustee Svonkin:

- WHEREAS, Gun violence has been escalating for many years, with devastating mass shootings occurring throughout the nation, reaching notoriety at Columbine High School (CO) and Virginia Tech and, more recently, seeming commonplace with occurrences in Aurora, Colorado and Newtown, Connecticut; and
- WHEREAS, There is a proliferation of and easy access to assault weapons and high-capacity ammunition magazines at gun shows and shops; and
- WHEREAS, Assault weapons and high-capacity ammunition magazines are often procured without any or the appropriate background checks; and
- WHEREAS, A number of these mass shootings have occurred at schools and colleges; and
- WHEREAS, School and college administrators are responsible for providing a safe and suitable environment for students to learn; and
- WHEREAS, A comprehensive ban on assault weapons and high-capacity ammunition magazines would increase the probability that mass shootings, should they occur, result in far fewer deaths and far less bodily harm; and
- WHEREAS, The Board of Trustees of the Los Angeles Community College District stands with the living victims and with the families who have lost loved ones to gun violence; now, therefore, be it
- RESOLVED, That the Board of Trustees of the Los Angeles Community College District strongly supports the federal legislation, Assault Weapons Ban 2013 (Feinstein), which would place a ban on both assault weapons and high-capacity ammunition magazines; and be it further
- RESOLVED, That the Board of Trustees of the Los Angeles Community College District strongly supports SB 47 (Yee) pertaining to assault weapons; and be it further
- RESOLVED, That the Board of Trustees of the Los Angeles Community College District strongly supports SB 53 (De Leon) which would require a permit for the purchase, acquisition or possession of ammunition and place certain prohibitions on the sale of ammunition; and be it further

Chancellor and Secretary of the Board of Trustees		Candaele <input checked="" type="checkbox"/>		Santiago <input checked="" type="checkbox"/>	
By <u>Burdette mfg</u>		Field <input checked="" type="checkbox"/>		Svonkin <input checked="" type="checkbox"/>	
Date <u>1/30/13</u>		Park <input checked="" type="checkbox"/>		Veres <input checked="" type="checkbox"/>	
		Pearlman <input checked="" type="checkbox"/>		Campos <input checked="" type="checkbox"/> Student Trustee Advisory Vote	
Page 1 of 2 Pages	Com. No. BT3	Div. Board of Trustees	Date	1/30/13	

## Board of Trustees

Los Angeles Community College District

Com. No. BT3	Division	Board of Trustees	Date: January 30, 2013
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RESOLVED, That the Board of Trustees of the Los Angeles Community College District hereby encourages California K-12 school districts, community college districts, and both of our UC and CSU system partners to join us in supporting the foregoing legislation; and be it further

RESOLVED, That the Board of Trustees of the Los Angeles Community College District hereby urges members of the United States Congress and the California Legislature to support the respective legislation.





SACHI A. HAMAI  
EXECUTIVE OFFICER

**COUNTY OF LOS ANGELES  
BOARD OF SUPERVISORS**

KENNETH RAHN HALL OF ADMINISTRATION  
300 WEST TEMPLE STREET, ROOM 585  
LOS ANGELES, CALIFORNIA 90012  
(213) 974-1411 • FAX (213) 620-6636

January 10, 2013

MEMBERS OF THE BOARD

GLORIA MOLINA

MARK RIDLEY-THOMAS

ZEV YAROSLAVSKY

DON KNABE

MICHAEL D. ANTONOVICH

The Honorable Dianne Feinstein  
United States Senate  
SH-331 Hart Senate Office Building  
Washington, D.C. 20510

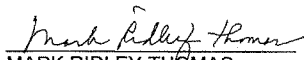
Dear Senator Feinstein:

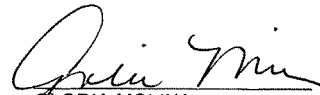
We are writing to express our strong support of your efforts to reinstate legislation that would regulate assault weapons.

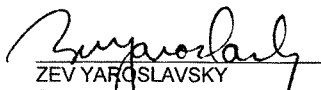
The most recent massacre of 20 children and seven adults in Newtown, Connecticut by an individual using an assault weapon underscores the urgent need to address access to and availability of such weapons. This tragedy deeply saddens us and, more importantly, highlights the need to ensure public safety and protect our citizens. The reenactment of your 1994 Federal Assault Weapons Ban or similar legislation would greatly assist in decreasing the illegal and lethal use of these dangerous weapons in our communities.

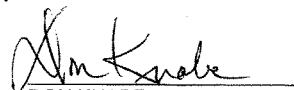
Thank you for your steadfast commitment to addressing gun violence. We stand ready to work with you and our State and Federal partners to ensure tragedies such as Newtown never happen again.

Sincerely,

  
MARK RIDLEY-THOMAS  
Chairman, Board of Supervisors

  
GLORIA MOLINA  
Supervisor, First District

  
ZEV YAROSLAVSKY  
Supervisor, Third District

  
DON KNABE  
Supervisor, Fourth District



## CITY OF PETALUMA

POST OFFICE BOX 61  
PETALUMA, CA 94953-0061

David Glass  
Mayor

January 17, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

This letter is to express my support of your legislation on the Assault Weapons Ban, to reinstate the ban military-style assault weapons and large-capacity ammunition feeding devices.

In recent years incidents of mass gun violence, including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, in our shopping malls and theaters, and most of all, in our schools. Your bill offers a sensible solution that will take these weapons out of our cities and neighborhoods while protecting the rights of legitimate hunters and current gun owners.

I support this common-sense gun safety measure to protect our communities and reduce violence. Please add my name/organization to the list of those endorsing your bill to ban assault weapons.

Sincerely,

David Glass  
Mayor of Petaluma

Petaluma City Hall  
11 English Street  
Petaluma, CA 94952

Phone (707) 778-4345  
Fax (707) 778-4419

E-Mail  
daveglass@comcast.net



★ MAYORS AGAINST ILLEGAL GUNS ★ [www.mayorsagainstillegalsguns.org](http://www.mayorsagainstillegalsguns.org)

February 11, 2013

The Honorable John Boehner  
Speaker  
United States House of Representatives  
Washington, DC 20515

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

Rep. Nancy Pelosi  
Democratic Leader  
United States House of Representatives  
Washington, DC 20515

Sen. Mitch McConnell  
Republican Leader  
United States Senate  
Washington, DC 20510

**RE: U.S. Mayors Call on Congress to Support Assault Weapons Ban**

Dear Speaker Boehner, Majority Leader Reid, Leader Pelosi, and Leader McConnell:

Military-style assault weapons and high-capacity ammunition magazines have been at the center of some of our country's deadliest mass shootings. Just since July, we have watched in horror as they have been used to gun down moviegoers in an Aurora theater, Sikh worshippers in an Oak Creek temple, and even young children in a Newtown elementary school. In order to prevent the next rampage and help save American lives, our nation needs clear and enforceable legislation that will take these weapons and magazines off our streets.

As the men and women who are responsible for protecting those streets, we write to urge your support for the **Assault Weapons Ban of 2013 (S. 150 / H.R. 437)**, introduced by Senator Dianne Feinstein and Congresswoman Carolyn McCarthy. Our bipartisan coalition of more than 850 U.S. mayors stands firmly behind this bill, which would ban the importation, sale, manufacture, transfer, and possession of assault weapons and high-capacity magazines – with some exceptions, including for law enforcement and military use, as well as for those weapons lawfully owned at the time of enactment.

In an effort to strengthen the now-expired 1994 version of the ban, this legislation would broaden the definition of “assault weapon” to prevent manufacturers from remodeling their weapons to circumvent the law. The new ban would be permanent and would require background checks for grandfathered weapons that are sold or transferred after the enactment date, including those sold or transferred by private sellers. It would also prohibit the sale and transfer of grandfathered high-capacity ammunition magazines.

These measures would go a long way toward ensuring the safety of our communities, and they enjoy the backing of a majority of Americans – including gun owners.

While military-style assault weapons and high-capacity magazines often play a prominent role in mass shootings, they are also a common threat in everyday incidents of gun violence that don't always make national headlines. According to the Department of Justice, high-capacity magazines are used in 14 to 26 percent of all gun crimes and in 31 to 41 percent of fatal police shootings. As Oklahoma City Police Chief Bill Citty said in January 2011 after one of his officers was fatally ambushed by a teenager with a semiautomatic AR-15: "There are just more and more assault rifles out there, and it is becoming a bigger threat to law enforcement each day. They are outgunned."

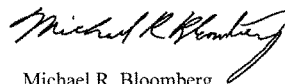
It's no wonder law enforcement groups across the country support a ban on these military-style weapons and high-capacity magazines, including the International Association of Chiefs of Police (IACP), the Major Cities Chiefs Association (MCC), and the Police Executive Research Forum (PERF).

We hope you will stand up for our communities, our law enforcement officials, and our children by supporting this common-sense proposal to curb gun violence. Far too many Americans are being killed with deadly assault weapons – it's up to you to act.

Sincerely,



Thomas M. Menino  
Coalition Co-Chair  
Mayor of Boston



Michael R. Bloomberg  
Coalition Co-Chair  
Mayor of New York City

**Signed by Members of Mayors Against Illegal Guns:**

Mayor Samuel L. Jones, Mobile, Alabama  
Mayor Satish I. Hiremath, Oro Valley, Arizona  
Mayor Scott LeMarr, Paradise Valley, Arizona  
Mayor Greg Stanton, Phoenix, Arizona  
Mayor Jennifer Eckstrom, South Tucson, Arizona  
Mayor Bill Rappaport, Star Valley, Arizona  
Mayor Mark W. Mitchell, Tempe, Arizona  
Mayor Jonathan Rothschild, Tucson, Arizona  
Mayor Larry S. Bryant, Forrest City, Arkansas  
Mayor Arnell Willis, Helena, Arkansas  
Mayor Lawrence Owens, Hughes, Arkansas  
Mayor McKinzie Riley, Wrightsville, Arkansas  
Mayor Marie L. Gilmore, Alameda, California  
Mayor Wade Harper, Antioch, California  
Mayor Elizabeth Patterson, Benicia, California  
Mayor Tom Bates, Berkeley, California  
Mayor Cheryl Cox, Chula Vista, California  
Mayor Eugene Montanez, Corona, California

Mayor Diane Furst, Corte Madera, California  
Mayor Joseph Krosova, Davis, California  
Mayor Jennifer West, Emeryville, California  
Mayor Teresa Arballo Barth, Encinitas, California  
Mayor John Reed, Fairfax, California  
Mayor Bill Harrison, Fremont, California  
Mayor Maria Orozco, Gonzales, California  
Mayor Connie Boardman, Huntington Beach, California  
Mayor James T. Butts, Jr., Inglewood, California  
Mayor Dan Hillmer, Larkspur, California  
Mayor Bob Foster, Long Beach, California  
Mayor Antonio Villaraigosa, Los Angeles, California  
Mayor Lou La Monte, Malibu, California  
Mayor Rob Schroder, Martinez, California  
Mayor Mary Ann Lutz, Monrovia, California  
Mayor Paul Eaton, Montclair, California  
Mayor R. Michael Kasperzak, Jr., Mountain View, California

Mayor Alan L. Nagy, Newark, California  
 Mayor Pat Eklund, Novato, California  
 Mayor Jean Quan, Oakland, California  
 Mayor Amy R. Worth, Orinda, California  
 Mayor Stephen P. Pougnet, Palm Springs, California  
 Mayor Bill Bogaard, Pasadena, California  
 Mayor Luis I. Molina, Patterson, California  
 Mayor David Glass, Petaluma, California  
 Mayor L. Dennis Michael, Rancho Cucamonga, California  
 Mayor Pete Aguilar, Redlands, California  
 Mayor Gayle McLaughlin, Richmond, California  
 Mayor Kevin Johnson, Sacramento, California  
 Mayor Kay Coleman, San Anselmo, California  
 Mayor Patrick J. Morris, San Bernardino, California  
 Mayor Edwin M. Lee, San Francisco, California  
 Mayor Chuck Reed, San Jose, California  
 Mayor Stephen H. Cassidy, San Leandro, California  
 Mayor Jan Marx, San Luis Obispo, California  
 Mayor Gary O. Phillips, San Rafael, California  
 Mayor Miguel Pulido, Santa Ana, California  
 Mayor Helene Schneider, Santa Barbara, California  
 Mayor Don Lane, Santa Cruz, California  
 Mayor Jill Hunter, Saratoga, California  
 Mayor Larry Forester, Signal Hill, California  
 Mayor Emmet O'Donnel, Tiburon, California  
 Mayor Osby Davis, Vallejo, California  
 Mayor Jeffrey Prang, West Hollywood, California  
 Mayor Christopher Cabaldon, West Sacramento, California  
 Mayor Matthew Appelbaum, Boulder, Colorado  
 Mayor Michael B. Hancock, Denver, Colorado  
 Mayor Randy P. Penn, Englewood, Colorado  
 Mayor Marjorie Sloan, Golden, Colorado  
 Mayor Carolyn Cutler, Lafayette, Colorado  
 Mayor Bob Murphy, Lakewood, Colorado  
 Mayor Robert Muckle, Louisville, Colorado  
 Mayor Marc A. Snyder, Manitou Springs, Colorado  
 Mayor Joe Gierlach, Nederland, Colorado  
 Mayor Joyce Downing, Northglenn, Colorado  
 Mayor Don Stephens, Salida, Colorado  
 Mayor Andrew Muckle, Superior, Colorado  
 Mayor Stuart Fraser, Telluride, Colorado  
 Mayor Adam Salina, Berlin, Connecticut  
 Mayor Bill Finch, Bridgeport, Connecticut  
 Mayor Mark Boughton, Danbury, Connecticut  
 Mayor Scott D. Jackson, Hamden, Connecticut  
 Mayor Pedro E. Segarra, Hartford, Connecticut  
 Mayor Daniel Drew, Middletown, Connecticut  
 Mayor John DeStefano, New Haven, Connecticut  
 Mayor Daryl Justin Finizio, New London, Connecticut  
 Mayor Patricia A. Murphy, New Milford, Connecticut  
 Mayor Richard A. Moccia, Norwalk, Connecticut  
 Mayor Michael A. Pavia, Stamford, Connecticut  
 Mayor Ryan Bingham, Torrington, Connecticut  
 Mayor Neil M. O'Leary, Waterbury, Connecticut  
 Mayor Scott Slifka, West Hartford, Connecticut  
 Mayor John M. Picard, West Haven, Connecticut  
 Mayor Michael J. Smith, Blades, Delaware  
 Mayor John P. Buchheit, III, Delaware City, Delaware  
 Mayor Diane C. Hanson, Dewey Beach, Delaware  
 Mayor James L. Ford, III, Lewes, Delaware  
 Mayor Kenneth Branner, Middletown, Delaware  
 Mayor Dennis P. Williams, Wilmington, Delaware  
 Mayor Susan Gottlieb, Aventura, Florida  
 Mayor Jean Rosenfield, Bal Harbour, Florida  
 Mayor Noah S. Jacobs, Biscayne Park, Florida  
 Mayor Woodrow L. Hay, Boynton Beach, Florida  
 Mayor Kristin Jacobs, Broward County, Florida  
 Mayor Marilyn Gerber, Coconut Creek, Florida  
 Mayor James C. Cason, Coral Gables, Florida  
 Mayor Judy Paul, Davie, Florida  
 Mayor Peggy Noland, Deerfield Beach, Florida  
 Mayor Bruce B. Mount, Eatonville, Florida  
 Mayor Craig Lowe, Gainesville, Florida  
 Mayor Glenn Singer, Golden Beach, Florida  
 Mayor Charles Sanders, Greenwood, Florida  
 Mayor Joy Cooper, Hallandale Beach, Florida  
 Mayor Peter J. M. Bober, Hollywood, Florida  
 Mayor Kenneth M. Schultz, Hypoluxo, Florida  
 Mayor Gow B. Fields, Lakeland, Florida  
 Mayor Patricia Gerard, Largo, Florida  
 Mayor Barrington Russell, Lauderdale Lakes, Florida  
 Mayor Richard J. Kaplan, Lauderhill, Florida  
 Mayor Howard A. Schieferdecker, Maitland, Florida  
 Mayor Tomas Regalado, Miami, Florida  
 Mayor Matti H. Bower, Miami Beach, Florida  
 Mayor Lori C. Moseley, Miramar, Florida  
 Mayor Connie Leon Kreps, North Bay Village, Florida  
 Mayor John Brady, North Lauderdale, Florida  
 Mayor Andre Pierre, North Miami, Florida  
 Mayor Myra L. Taylor, Opa-Locka, Florida  
 Mayor Buddy Dyer, Orlando, Florida  
 Mayor Dominic Persampiere, Oviedo, Florida  
 Mayor James P. Sasser, Pahokee, Florida  
 Mayor Frank C. Ortis, Pembroke Pines, Florida  
 Mayor Cindy Lerner, Pinecrest, Florida  
 Mayor Diane Veltri Bendekovic, Plantation, Florida  
 Mayor Thomas A. Masters, Riviera Beach, Florida  
 Mayor Norman S. Edelcup, Sunny Isles Beach, Florida  
 Mayor Michael J. Ryan, Sunrise, Florida  
 Mayor Daniel Dietch, Surfside, Florida  
 Mayor John Marks, III, Tallahassee, Florida  
 Mayor Beth Talabisco, Tamarac, Florida  
 Mayor Jeri Muoio, West Palm Beach, Florida  
 Mayor Eric Jones, West Park, Florida  
 Mayor Daniel J. Stermer, Weston, Florida  
 Mayor Gary Resnick, Wilton Manors, Florida  
 Mayor Kasim Reed, Atlanta, Georgia  
 Mayor Deke Copehauer, Augusta, Georgia  
 Mayor Donna Pittman, Doraville, Georgia  
 Mayor Earnestine D. Pittman, East Point, Georgia  
 Mayor James Thomas, Jr., Hinesville, Georgia  
 Mayor Robert A. B. Reichert, Macon, Georgia

Mayor June D. Bradfield, McRae, Georgia  
 Mayor Jim Still, Jr., Mountain Park, Georgia  
 Mayor Kathie deNobriga, Pine Lake, Georgia  
 Mayor Jere Wood, Roswell, Georgia  
 Mayor Patricia Wheeler, Stone Mountain, Georgia  
 Mayor Ralph Moore, Union City, Georgia  
 Mayor William P. Kenoi, Hilo, Hawaii  
 Mayor Bernard P. Carvalho, Jr., Kauai, Hawaii  
 Mayor Larry Hartwig, Addison, Illinois  
 Mayor Arlene J. Mulder, Arlington Heights, Illinois  
 Mayor Joel Fritzler, Carbondale, Illinois  
 Mayor Rahm Emanuel, Chicago, Illinois  
 Mayor Harriet Rosenthal, Deerfield, Illinois  
 Mayor Kris Povlsen, DeKalb, Illinois  
 Mayor Teresa Kernc, Diamond, Illinois  
 Mayor Thomas A. Brown, East Hazel Crest, Illinois  
 Mayor Alvin L. Parks, Jr., East St. Louis, Illinois  
 Mayor David L. Anderson, Elburn, Illinois  
 Mayor David J. Kaptain, Elgin, Illinois  
 Mayor Elizabeth Tisdahl, Evanston, Illinois  
 Mayor James J. Sexton, Evergreen Park, Illinois  
 Mayor Michael Howley, Hickory Hills, Illinois  
 Mayor Joseph T. Tamburino, Hillside, Illinois  
 Mayor Gerald C. Turry, Lincolnwood, Illinois  
 Mayor Joseph J. Broda, Lisle, Illinois  
 Mayor Eugene Williams, Lynwood, Illinois  
 Mayor Henderson Yarbrough, Sr., Maywood, Illinois  
 Mayor Christopher Koos, Normal, Illinois  
 Mayor Leon Rockingham, Jr., North Chicago, Illinois  
 Mayor Kyle R. Hastings, Orland Hills, Illinois  
 Mayor Robert S. Straz, Palos Heights, Illinois  
 Mayor Gerald R. Bennett, Palos Hills, Illinois  
 Mayor Greg Marston, Pingree Grove, Illinois  
 Mayor Lawrence J. Morrissey, Rockford, Illinois  
 Mayor George Van Dusen, Skokie, Illinois  
 Mayor Don A. DeGraff, South Holland, Illinois  
 Mayor Beniamino Mazzulla, Stone Park, Illinois  
 Mayor Laurel Prussing, Urbana, Illinois  
 Mayor Robert Sabonjian, Waukegan, Illinois  
 Mayor Sam D. Pulia, Westchester, Illinois  
 Mayor Richard Hickman, Angola, Indiana  
 Mayor Mark Kruzan, Bloomington, Indiana  
 Mayor Tom C. Henry, Fort Wayne, Indiana  
 Mayor Karen Freeman-Wilson, Gary, Indiana  
 Mayor Dennis Tyler, Muncie, Indiana  
 Mayor Peter Buttigieg, South Bend, Indiana  
 Mayor William E. Gluba, Davenport, Iowa  
 Mayor T. M. Franklin Cownie, Des Moines, Iowa  
 Mayor Ray D. Buol, Dubuque, Iowa  
 Mayor Matt Hayek, Iowa City, Iowa  
 Mayor Robert E. Scott, Sioux City, Iowa  
 Mayor Buck Clark, Waterloo, Iowa  
 Mayor Crosby Gernon, Hiawatha, Kansas  
 Mayor Carl Brewer, Wichita, Kansas  
 Mayor Gene McMurry, Carrollton, Kentucky  
 Mayor Greg Fischer, Louisville, Kentucky

Mayor Kip "Kip" Holden, Baton Rouge, Louisiana  
 Mayor Mitchell J. Landrieu, New Orleans, Louisiana  
 Mayor Rodney A. Grogan, Patterson, Louisiana  
 Mayor Cedric B. Glover, Shreveport, Louisiana  
 Mayor William R. Stokes, Augusta, Maine  
 Mayor Charlotte M. Warren, Hallowell, Maine  
 Mayor Michael Brennan, Portland, Maine  
 Mayor Joshua J. Cohen, Annapolis, Maryland  
 Mayor Stephanie Rawlings-Blake, Baltimore, Maryland  
 Mayor Victoria Jackson-Stanley, Cambridge, Maryland  
 Mayor Margo G. Bailey, Chestertown, Maryland  
 Mayor Michael H. Callahan, Cheverly, Maryland  
 Mayor Andrew M. Fellows, College Park, Maryland  
 Mayor Brian K. Grim, Cumberland, Maryland  
 Mayor Robert C. Willey, Easton, Maryland  
 Mayor Sidney A. Katz, Gaithersburg, Maryland  
 Mayor Peter Benjamin, Garrett Park, Maryland  
 Mayor Dennis J. Scheesele, Indian Head, Maryland  
 Mayor Craig A. Moe, Laurel, Maryland  
 Mayor Phyllis Marcuccio, Rockville, Maryland  
 Mayor James Ireton, Jr., Salisbury, Maryland  
 Mayor Jeffrey Slavin, Somerset, Maryland  
 Mayor Bruce R. Williams, Takoma Park, Maryland  
 Mayor Thatcher W. Kezer, III, Amesbury, Massachusetts  
 Mayor Kevin J. Dumas, Attleboro, Massachusetts  
 Mayor William F. Scanlon, Jr., Beverly, Massachusetts  
 Mayor Thomas Menino, Boston, Massachusetts  
 Mayor Joseph C. Sullivan, Braintree, Massachusetts  
 Mayor Linda M. Balzotti, Brockton, Massachusetts  
 Mayor Henrietta Davis, Cambridge, Massachusetts  
 Mayor Carlo DeMaria, Jr., Everett, Massachusetts  
 Mayor Lisa A. Wong, Fitchburg, Massachusetts  
 Mayor Alex Morse, Holyoke, Massachusetts  
 Mayor Patrick O. Murphy, Lowell, Massachusetts  
 Mayor Gary Christenson, Malden, Massachusetts  
 Mayor Michael J. McGlynn, Medford, Massachusetts  
 Mayor Robert J. J. Dolan, Melrose, Massachusetts  
 Mayor Jonathan F. Mitchell, New Bedford, Massachusetts  
 Mayor Donna D. Holaday, Newburyport, Massachusetts  
 Mayor Setti D. Warren, Newton, Massachusetts  
 Mayor David J. Narkewicz, Northampton, Massachusetts  
 Mayor Edward A. Bettencourt, Jr., Peabody, Massachusetts  
 Mayor Thomas Koch, Quincy, Massachusetts  
 Mayor Daniel Rizzo, Revere, Massachusetts  
 Mayor Kimberley Driscoll, Salem, Massachusetts  
 Mayor Joseph A. Curtatone, Somerville, Massachusetts  
 Mayor Domenic Sarno, Springfield, Massachusetts  
 Mayor Thomas Hoyer, Taunton, Massachusetts  
 Mayor Susan M. Kay, Weymouth, Massachusetts  
 Mayor Scott Galvin, Woburn, Massachusetts  
 Mayor John Hieftje, Ann Arbor, Michigan  
 Mayor Phil O'Dwyer, Berkley, Michigan  
 Mayor John B. O'Reilly, Jr., Dearborn, Michigan  
 Mayor Dave Bing, Detroit, Michigan  
 Mayor Diane Goddeeris, East Lansing, Michigan  
 Mayor Dayne Walling, Flint, Michigan

Mayor George Heartwell, Grand Rapids, Michigan  
 Mayor Karen Majewski, Hamtramck, Michigan  
 Mayor Bobby J. Hopewell, Kalamazoo, Michigan  
 Mayor Virg Bernero, Lansing, Michigan  
 Mayor Brenda L. Lawrence, Southfield, Michigan  
 Mayor Paul T. Schreiber, Ypsilanti, Michigan  
 Mayor Don Ness, Duluth, Minnesota  
 Mayor Peter Lindstrom, Falcon Heights, Minnesota  
 Mayor R.T. Rybak, Minneapolis, Minnesota  
 Mayor Chris Coleman, St. Paul, Minnesota  
 Mayor Wardell Walton, Belzoni, Mississippi  
 Mayor Johnny DuPree, Hattiesburg, Mississippi  
 Mayor Harvey Johnson, Jackson, Mississippi  
 Mayor McArthur Straughter, Yazoo City, Mississippi  
 Mayor Linda Goldstein, Clayton, Missouri  
 Mayor Sylvester "Sly" James, Kansas City, Missouri  
 Mayor Randall L. Rhoads, Lee's Summit, Missouri  
 Mayor Francis Slay, St. Louis, Missouri  
 Mayor Shelley Welsch, University City, Missouri  
 Mayor Jim Suttle, Omaha, Nebraska  
 Mayor Donald A. Groesser, Ralston, Nebraska  
 Mayor Dean Trefethen, Dover, New Hampshire  
 Mayor Fred Tagliarini, Aberdeen, New Jersey  
 Mayor Ed Johnson, Asbury Park, New Jersey  
 Mayor Lorenzo T. Langford, Atlantic City, New Jersey  
 Mayor Mark Smith, Bayonne, New Jersey  
 Mayor Timothy J. Driscoll, Bergenfield, New Jersey  
 Mayor Patrick H. McHale, Bogota, New Jersey  
 Mayor Albert B. Kelly, Bridgeton, New Jersey  
 Mayor Dana L. Redd, Camden, New Jersey  
 Mayor Chuck Cahn, Cherry Hill, New Jersey  
 Mayor Janice Kovach, Clinton, New Jersey  
 Mayor Sophie Heymann, Closter, New Jersey  
 Mayor M. James Maley, Jr., Collingswood, New Jersey  
 Mayor Thomas Hannen, Jr., Cranford, New Jersey  
 Mayor Joseph R. Smith, East Newark, New Jersey  
 Mayor Robert L. Bowser, East Orange, New Jersey  
 Mayor Antonia Ricigliano, Edison, New Jersey  
 Mayor J. Christian Bollwage, Elizabeth, New Jersey  
 Mayor Carlos Colina, Emerson, New Jersey  
 Mayor Colleen Mahr, Fanwood, New Jersey  
 Mayor Warren Cooper, Frenchtown, New Jersey  
 Mayor Joseph Delaney, Garfield, New Jersey  
 Mayor Gerald R. Drasheff, Guttenberg, New Jersey  
 Mayor Maria DiGiovanni, Hackensack, New Jersey  
 Mayor Domenick Stampone, Haledon, New Jersey  
 Mayor Raymond J. McDonough, Harrison, New Jersey  
 Mayor Richard S. Goldberg, Hawthorne, New Jersey  
 Mayor Gary Minkoff, Highland Park, New Jersey  
 Mayor Dawn Zimmer, Hoboken, New Jersey  
 Mayor Paul Anzano, Hopewell, New Jersey  
 Mayor Wayne Smith, Irvington, New Jersey  
 Mayor Jeremiah Healy, Jersey City, New Jersey  
 Mayor Michael B. Ryan, Lake Como, New Jersey  
 Mayor David M. DelVecchio, Lambertville, New Jersey  
 Mayor Richard J. Gerbounka, Linden, New Jersey

Mayor Mauro D. Raguseo, Little Ferry, New Jersey  
 Mayor Frank W. Minor, Logan Township, New Jersey  
 Mayor Nicholas Russo, Longport, New Jersey  
 Mayor Michael E. Beck, Lower Township, New Jersey  
 Mayor William Laforet, Mahwah, New Jersey  
 Mayor Michael Fressola, Manchester Township, New Jersey  
 Mayor Victor DeLuca, Maplewood, New Jersey  
 Mayor Frank M. North, Merchantville, New Jersey  
 Mayor Patrick O'Hagan, Midland Park, New Jersey  
 Mayor James A. Gallos, Millford, New Jersey  
 Mayor Sandra Haimoff, Millburn, New Jersey  
 Mayor Robert D. Jackson, Montclair, New Jersey  
 Mayor Dennis Vaccaro, Moonachie, New Jersey  
 Mayor Timothy Dougherty, Morristown, New Jersey  
 Mayor J. Brooke Hern, New Providence, New Jersey  
 Mayor Cory Booker, Newark, New Jersey  
 Mayor Peter C. Massa, North Arlington, New Jersey  
 Mayor Francis M. Womack, III, North Brunswick, New Jersey  
 Mayor Randy George, North Haledon, New Jersey  
 Mayor Owen Henry, Old Bridge, New Jersey  
 Mayor James R. Barberio, Parsippany-Troy Hills, New Jersey  
 Mayor Alex D. Blanco, Passaic, New Jersey  
 Mayor Jeffrey Jones, Paterson, New Jersey  
 Mayor Wilda Diaz, Perth Amboy, New Jersey  
 Mayor Harry L. Wyant, Phillipsburg, New Jersey  
 Mayor Sharon M. Robinson-Briggs, Plainfield, New Jersey  
 Mayor Jesse L. Tweedle, Sr., Pleasantville, New Jersey  
 Mayor Liz Lempert, Princeton, New Jersey  
 Mayor Pasquale Menna, Red Bank, New Jersey  
 Mayor Paul Aronsohn, Ridgewood, New Jersey  
 Mayor Sandy Moscaritolo, River Edge, New Jersey  
 Mayor Jamel C. Holley, Roselle, New Jersey  
 Mayor Joe Accardi, Roselle Park, New Jersey  
 Mayor Kevin Glover, Scotch Plains, New Jersey  
 Mayor Michael J. Gonnelli, Secaucus, New Jersey  
 Mayor Alex Torpey, South Orange, New Jersey  
 Mayor Nicholas Poliseo, Spotswood, New Jersey  
 Mayor Peter S. Rustin, Tenafly, New Jersey  
 Mayor Clifton People, Jr., Union, New Jersey  
 Mayor Brian P. Stack, Union City, New Jersey  
 Mayor Robert Romano, Vineland, New Jersey  
 Mayor Robert D. Parisi, West Orange, New Jersey  
 Mayor Shing-Fu Hsueh, West Windsor, New Jersey  
 Mayor John Birkner, Jr., Westwood, New Jersey  
 Mayor Julia C. Andrews, Whitehouse Station, New Jersey  
 Mayor John E. McCormac, Woodbridge, New Jersey  
 Mayor Jeffrey R. Goldsmith, Woodcliff Lake, New Jersey  
 Mayor Keith Kazmark, Woodland Park, New Jersey  
 Mayor Joe Murrieta, Grants, New Mexico  
 Mayor Kenneth D. Miyagishima, Las Cruces, New Mexico  
 Mayor Ray Alborn, Ruidoso, New Mexico  
 Mayor David Coss, Santa Fe, New Mexico  
 Mayor Albert Campos, Jr., Santa Rosa, New Mexico

Mayor Gloria J. Chavez, Tijeras, New Mexico  
 Mayor Gerald Jennings, Albany, New York  
 Mayor James Gaughan, Altamont, New York  
 Mayor Ann Thane, Amsterdam, New York  
 Mayor Peter R. Porcino, Ardsley, New York  
 Mayor Andrea Smallwood, Athens, New York  
 Mayor Randy Casale, Beacon, New York  
 Mayor Matthew T. Ryan, Binghamton, New York  
 Mayor James J. Schoenig, Brewster, New York  
 Mayor Eugene Christopher, Broadalbin, New York  
 Mayor Byron Brown, Buffalo, New York  
 Mayor G. Wayne McIlroy, Carthage, New York  
 Mayor Joseph Keegan, Castleton, New York  
 Mayor Jerome Kobre, Chestnut Ridge, New York  
 Mayor John A. Lane, Clinton, New York  
 Mayor John McDonald, Cohoes, New York  
 Mayor Jeff Katz, Cooperstown, New York  
 Mayor Mark Evans, Coxsackie, New York  
 Mayor Robert J. Foster, Deferiet, New York  
 Mayor Sally E. Burns, Delanson, New York  
 Mayor Steven P. Hoffman, Depew, New York  
 Mayor Randy Sterling, Dryden, New York  
 Mayor Allan A. Kasprzak, East Aurora, New York  
 Mayor Paul Rickenbach, East Hampton, New York  
 Mayor Mitchell Levinn, East Nassau, New York  
 Mayor Henry Doerr, Elbridge, New York  
 Mayor Jeffrey Kaplan, Ellenville, New York  
 Mayor James Matthews, Ellisburg, New York  
 Mayor Stephen G. Sommers, Fabius, New York  
 Mayor Mark Olson, Fayetteville, New York  
 Mayor James J. Miccio, Fishkill, New York  
 Mayor Andrew Hardwick, Freeport, New York  
 Mayor John Diamond, Glens Falls, New York  
 Mayor Dayton J. King, Gloversville, New York  
 Mayor Jean A. Celender, Great Neck Plaza, New York  
 Mayor Ralph J. Kreitzman, Great Neck Village, New York  
 Mayor Barbara Moore, Greenwood Lake, New York  
 Mayor Martin Natoli, Hagaman, New York  
 Mayor Emery Cummings, Jr., Hammondsport, New York  
 Mayor Ronald Belmont, Harrison, New York  
 Mayor Peter Swiderski, Hastings-on-Hudson, New York  
 Mayor Michael Kohut, Haverstraw, New York  
 Mayor Natale J. Tartamella, Head of the Harbor, New York  
 Mayor Wayne J. Hall, Sr., Hempstead, New York  
 Mayor Richard Beirman, Sr., Herrings, New York  
 Mayor Bernard Jackson, Hillburn, New York  
 Mayor Joseph M. Lee, Hilton, New York  
 Mayor Shawn Hogan, Hornell, New York  
 Mayor Brian C. Smith, Irvington, New York  
 Mayor Svante L. Myrick, Ithaca, New York  
 Mayor Samuel Teresi, Jamestown, New York  
 Mayor Susan Lopatkin, Kensington, New York  
 Mayor Shayne R. Gallo, Kingston, New York  
 Mayor Robert Blais, Lake George, New York  
 Mayor Ronald S. Cooper, Lake Success, New York  
 Mayor Anne H. McAndrews, Larchmont, New York  
 Mayor Martin Oliner, Lawrence, New York  
 Mayor Carl Luft, Lima, New York  
 Mayor Norman L. Marsh, Little Valley, New York  
 Mayor Corrine Kleisle, Lyons, New York  
 Mayor Barbara Clark, Madison, New York  
 Mayor Patricia McDonald, Malverne, New York  
 Mayor Mark-Paul Serafin, Manlius Village, New York  
 Mayor James F. Hidy, Massena, New York  
 Mayor Dennis Leahy, Maybrook, New York  
 Mayor Anthony Sylvester, Mechanicville, New York  
 Mayor Terry Grimshaw, Mexico, New York  
 Mayor Richard J. Donovan, Minoa, New York  
 Mayor James C. Purcell, Monroe, New York  
 Mayor Jeffrey Oppenheim, Montebello, New York  
 Mayor Gordon Jenkins, Monticello, New York  
 Mayor Ernest D. Davis, Mount Vernon, New York  
 Mayor Noam Bramson, New Rochelle, New York  
 Mayor Mike Bloomberg, New York, New York  
 Mayor Peter M. Blandino, Newark, New York  
 Mayor Judith L. Kennedy, Newburgh, New York  
 Mayor Paul A. Dyster, Niagara Falls, New York  
 Mayor Laura Nolan, North Haven, New York  
 Mayor Marvin Natiss, North Hills, New York  
 Mayor Joseph Maiurano, Norwich, New York  
 Mayor Linda L. Witte, Olean, New York  
 Mayor Richard P. Miller, Jr., Oneonta, New York  
 Mayor William R. Hanauer, Ossining, New York  
 Mayor Brian Wona, Otisville, New York  
 Mayor Paul Pontieri, Patchogue, New York  
 Mayor Mary Foster, Peckskill, New York  
 Mayor Anthony Fratto, Phoenix, New York  
 Mayor Christopher Sanders, Piermont, New York  
 Mayor Donald M. Kasprzak, Plattsburgh, New York  
 Mayor Peter Scherer, Pleasantville, New York  
 Mayor Robert Weitzner, Port Washington, New York  
 Mayor John Bruno, Ravena, New York  
 Mayor Daniel J. Dwyer, Rensselaer, New York  
 Mayor Kevin Neary, Richmondville, New York  
 Mayor Thomas Richards, Rochester, New York  
 Mayor John Durkin, Roslyn, New York  
 Mayor Matthew Bloomfield, Russell Gardens, New York  
 Mayor Grant Rohrmoser, Sandy Creek, New York  
 Mayor Clyde Rabideau, Saranac Lake, New York  
 Mayor Scott Johnson, Saratoga Springs, New York  
 Mayor Gregge Harrian, Savona, New York  
 Mayor Gary R. McCarthy, Schenectady, New York  
 Mayor Paul F. Gee, Scottsville, New York  
 Mayor Omer Cousineau, Sharon Springs, New York  
 Mayor John Patterson, Sherman, New York  
 Mayor Ken Wray, Sleepy Hollow, New York  
 Mayor Leonard Szymanski, Sloan, New York  
 Mayor Karen Strickland, South Dayton, New York  
 Mayor Geoffrey N. Prime, South Floral Park, New York  
 Mayor Patricia DuBow, South Nyack, New York  
 Mayor Mark Epley, Southampton, New York  
 Mayor Letty J. Rudes, Speculator, New York



Mayor Joyce Lobene, Spencerport, New York  
 Mayor Noramie F. Jasmin, Spring Valley, New York  
 Mayor Dagan LaCorte, Suffern, New York  
 Mayor Edward Stewart, III, Sylvan Beach, New York  
 Mayor Stephanie A. Miner, Syracuse, New York  
 Mayor Drew Fixell, Tarrytown, New York  
 Mayor Ronald Pilozzi, Tonawanda, New York  
 Mayor Louis A. Rosamilia, Troy, New York  
 Mayor A. Martin Petrovic, Trumansburg, New York  
 Mayor Beth Greenwood, Tully, New York  
 Mayor Michael Esmay, Upper Nyack, New York  
 Mayor Theodore H. Young, Waterloo, New York  
 Mayor Michael P. Manning, Watervliet, New York  
 Mayor Brian D. McCoy, Wayland, New York  
 Mayor David Goldsmith, Wesley Hills, New York  
 Mayor Scott M. Burto, West Carthage, New York  
 Mayor John Ramundo, Jr., West Haverstraw, New York  
 Mayor David Carr, Westfield, New York  
 Mayor Thomas M. Roach, White Plains, New York  
 Mayor Mike Spano, Yonkers, New York  
 Mayor Anthony C. Leone, Jr., Yorkville, New York  
 Mayor Walter B. Goodenough, Carolina Shores, North Carolina  
 Mayor Mark Chilton, Carrboro, North Carolina  
 Mayor Mark Kleinschmidt, Chapel Hill, North Carolina  
 Mayor Darryl D. Moss, Creedmoor, North Carolina  
 Mayor Bill Bell, Durham, North Carolina  
 Mayor Jackie Holcombe, Morrisville, North Carolina  
 Mayor Jaqueline vdH Sergent, Oxford, North Carolina  
 Mayor Nancy McFarlane, Raleigh, North Carolina  
 Mayor Victor Varela, Ronda, North Carolina  
 Mayor J. Allen Joines, Winston-Salem, North Carolina  
 Mayor Dennis Walaker, Fargo, North Dakota  
 Mayor Dan Pillow, Addyston, Ohio  
 Mayor Donald Plusquellic, Akron, Ohio  
 Mayor Bernard Baronowski, Andover, Ohio  
 Mayor Ronald A. Bischof, Barnesville, Ohio  
 Mayor Deborah L. Sutherland, Bay Village, Ohio  
 Mayor Merle S. Gorden, Beachwood, Ohio  
 Mayor Daniel S. Pocek, Bedford, Ohio  
 Mayor Fletcher Berger, Bedford Heights, Ohio  
 Mayor Cyril Kleem, Berea, Ohio  
 Mayor John M. Licastro, Bratenahl, Ohio  
 Mayor Samuel J. Alai, Broadview Heights, Ohio  
 Mayor David Seagraves, Brookville, Ohio  
 Mayor Lowell E. Anderson, Caldwell, Ohio  
 Mayor William J. Healy, II, Canton, Ohio  
 Mayor Tammy D. Drobina, Carroll, Ohio  
 Mayor Diana Stockmaster, Centerburg, Ohio  
 Mayor Mark Mallory, Cincinnati, Ohio  
 Mayor Frank Jackson, Cleveland, Ohio  
 Mayor Edward J. Kelley, Cleveland Heights, Ohio  
 Mayor Danny Stacy, Cleves, Ohio  
 Mayor Michael Coleman, Columbus, Ohio  
 Mayor William Armentrout, Creston, Ohio  
 Mayor Gary D. Leitzell, Dayton, Ohio  
 Mayor Gary L. Comer, De Graff, Ohio  
 Mayor Terry L. Lindeman, Doylestown, Ohio  
 Mayor Gary Norton, East Cleveland, Ohio  
 Mayor Ted Andrzejewski, East Lake, Ohio  
 Mayor James P. Swoger, East Liverpool, Ohio  
 Mayor Patricia Burnside, Englewood, Ohio  
 Mayor Bill Cervenick, Euclid, Ohio  
 Mayor Thomas H. Nagel, Fairborn, Ohio  
 Mayor Charles H. Johnson, Forest Park, Ohio  
 Mayor Gary Middlemus, Fazeysburg, Ohio  
 Mayor Kirk Emmert, Gambier, Ohio  
 Mayor Dave Nelson, Geneva-on-the-Lake, Ohio  
 Mayor Mark Williams, Genoa, Ohio  
 Mayor Alan Zaffiro, Golf Manor, Ohio  
 Mayor Ray E. DeGraw, Grandview Heights, Ohio  
 Mayor Gary Lee Young, Greenville, Ohio  
 Mayor Lance Westcamp, Groveport, Ohio  
 Mayor Richard L. Verga, Harveysburg, Ohio  
 Mayor Clifford Mason, Hebron, Ohio  
 Mayor Lou Bertrand, Hiram, Ohio  
 Mayor Susan J. Pelkowski, Holloway, Ohio  
 Mayor William A. Currin, Hudson, Ohio  
 Mayor Rich Blankenship, Ironton, Ohio  
 Mayor Jerry Fiala, Kent, Ohio  
 Mayor Deborah L. Neale, Lakeline, Ohio  
 Mayor David J. Berger, Lima, Ohio  
 Mayor Jo Ann Tocek, Linndale, Ohio  
 Mayor Patricia A. Fallot, Louisville, Ohio  
 Mayor Joseph M. Cicero, Jr., Lyndhurst, Ohio  
 Mayor Donald Kuchta, Macedonia, Ohio  
 Mayor Steve Adams, Malvern, Ohio  
 Mayor Jeffrey A. Lansky, Maple Heights, Ohio  
 Mayor Joe A. Matthews, Marietta, Ohio  
 Mayor Bruce G. Rinker, Mayfield Village, Ohio  
 Mayor Robert Schwab, McComb, Ohio  
 Mayor Glenn W. Holmes, McDonald, Ohio  
 Mayor Richard Cain, Mineral City, Ohio  
 Mayor James B. Waller, Minerva, Ohio  
 Mayor Susan C. Renda, Moreland Hills, Ohio  
 Mayor Mike Porter, Mount Gilead, Ohio  
 Mayor Charles Neff, Mount Sterling, Ohio  
 Mayor Jeffrey C. Wherley, Nellie, Ohio  
 Mayor James A. Friel, Newcomerstown, Ohio  
 Mayor Daniel R. Brooks, North College Hill, Ohio  
 Mayor Terrance J. McConnell, North Kingsville, Ohio  
 Mayor Ed Kleo, North Perry, Ohio  
 Mayor Kathy Mulcahy, Orange Village, Ohio  
 Mayor Richard M. Bain, Pepper Pike, Ohio  
 Mayor Billy R. Spencer, Piketon, Ohio  
 Mayor Timothy Redden, Plymouth, Ohio  
 Mayor Timothy Scafuse, Poland, Ohio  
 Mayor David A. Malone, Portsmouth, Ohio  
 Mayor Daniel J. Ursu, Richmond Heights, Ohio  
 Mayor William Nibert, Richwood, Ohio  
 Mayor William R. Flaute, Riverside, Ohio  
 Mayor Earl M. Leiken, Shaker Heights, Ohio

Mayor Patrick C. Monahan, Shawnee Hills, Ohio  
 Mayor John Smith, Silverton, Ohio  
 Mayor Georgine Welo, South Euclid, Ohio  
 Mayor Matthew Brett, South Russell, Ohio  
 Mayor Warren R. Copeland, Springfield, Ohio  
 Mayor William C. Burkhardt, St. Bernard, Ohio  
 Mayor Domenick Mucci, Jr., Steubenville, Ohio  
 Mayor Clayton Weller, Sugarcreek, Ohio  
 Mayor Michael P. Bell, Toledo, Ohio  
 Mayor Mary Myers, Verona, Ohio  
 Mayor Daniel V. Wilczynski, Walbridge, Ohio  
 Mayor Doug Franklin, Warren, Ohio  
 Mayor Allen Patchin, West Farmington, Ohio  
 Mayor Ann Schreiner, West Millgrove, Ohio  
 Mayor Kim Maggard, Whitehall, Ohio  
 Mayor William A. Margalis, Wickliffe, Ohio  
 Mayor Richard J. Bonde, Willowick, Ohio  
 Mayor Susan Upton Farley, Woodlawn, Ohio  
 Mayor Charles Sammarone, Youngstown, Ohio  
 Mayor Jeff Tilton, Zanesville, Ohio  
 Mayor Kitty Piercy, Eugene, Oregon  
 Mayor Charlie Hales, Portland, Oregon  
 Mayor James Hopely, Aldan, Pennsylvania  
 Mayor Ed Pawlowski, Allentown, Pennsylvania  
 Mayor Charles T. Wahl, Ambler, Pennsylvania  
 Mayor Gretchen Dosch, Applewold, Pennsylvania  
 Mayor Bernard Killian, Aspinwall, Pennsylvania  
 Mayor Doris E. Howell, Avondale, Pennsylvania  
 Mayor Alexander Bennett, Jr., Baldwin, Pennsylvania  
 Mayor Phillip Ferrizzi, Bally, Pennsylvania  
 Mayor John Arthur Brown, Bangor, Pennsylvania  
 Mayor Donald L. Wunderler, Bath, Pennsylvania  
 Mayor Cloyd W. Wagner, Beavertown, Pennsylvania  
 Mayor Stanley Goldman, Bellefonte, Pennsylvania  
 Mayor Robin J. Gochenauer, Bendersville, Pennsylvania  
 Mayor Gail Stoudt, Bernville, Pennsylvania  
 Mayor John B. Callahan, Bethlehem, Pennsylvania  
 Mayor Everett W. Saxton, Bolivar, Pennsylvania  
 Mayor Vincent H. Liebel, Boswell, Pennsylvania  
 Mayor Marianne Deery, Boyertown, Pennsylvania  
 Mayor Kenneth Lockhart, Brentwood, Pennsylvania  
 Mayor Vernel L. Creveling, Briar Creek, Pennsylvania  
 Mayor David Wonderling, Brookville, Pennsylvania  
 Mayor Lester J. Ward, Brownsville, Pennsylvania  
 Mayor Anna Marie Quader, Burgettstown, Pennsylvania  
 Mayor Loyce Harpster, Burnham, Pennsylvania  
 Mayor Margaret Stock, Butler, Pennsylvania  
 Mayor David H. Rhome, Canonsburg, Pennsylvania  
 Mayor Justin M. Taylor, Carbondale, Pennsylvania  
 Mayor Donald Baumgarten, Castle Shannon, Pennsylvania  
 Mayor Barbara A. Schlegel, Catasauqua, Pennsylvania  
 Mayor James S. Perry, Chalfant, Pennsylvania  
 Mayor Marilyn J. Becker, Chalfont, Pennsylvania  
 Mayor Peter Lagiovane, Chambersburg, Pennsylvania  
 Mayor Ronald W. Lockwood, Cherry Valley, Pennsylvania  
 Mayor John A. Linder, Chester, Pennsylvania

Mayor Paul H. McKenna, Churchill, Pennsylvania  
 Mayor Richard L. Lattanzi, Clairton, Pennsylvania  
 Mayor Andrea J. Estadt, Clarion, Pennsylvania  
 Mayor Harry Kelly, Clarks Summit, Pennsylvania  
 Mayor James P. Schell, Clearfield, Pennsylvania  
 Mayor John Hartman, Cleona, Pennsylvania  
 Mayor Frank C. Kelly, Collingdale, Pennsylvania  
 Mayor Daniel Rutland, Colwyn, Pennsylvania  
 Mayor Allen Gyorko, Confluence, Pennsylvania  
 Mayor Joseph Carrelli, Conyngham, Pennsylvania  
 Mayor Anthony G. Celeste, Coraopolis, Pennsylvania  
 Mayor Mark J. Thomas, Cornwall, Pennsylvania  
 Mayor Gail E. Knauf, Cressona, Pennsylvania  
 Mayor Timothy J. Carroll, Dallas, Pennsylvania  
 Mayor Helen R. Thomas, Darby, Pennsylvania  
 Mayor John Lignelli, Donora, Pennsylvania  
 Mayor Thomas R. Lloyd, Dormont, Pennsylvania  
 Mayor Richard A. Pope, Dover, Pennsylvania  
 Mayor Josh Maxwell, Downingtown, Pennsylvania  
 Mayor Libby White, Doylestown, Pennsylvania  
 Mayor Philip Krivacek, Duquesne, Pennsylvania  
 Mayor Betty M. Hays, Eagles Mere, Pennsylvania  
 Mayor Louis J. Payne, East Pittsburgh, Pennsylvania  
 Mayor Mark A. Pacilla, East Washington, Pennsylvania  
 Mayor Salvatore J. Panto, Jr., Easton, Pennsylvania  
 Mayor J. Edward Cook, Edgewood, Pennsylvania  
 Mayor Wayne T. Murphy, Edgeworth, Pennsylvania  
 Mayor Ray Plummer, Ehrenfeld, Pennsylvania  
 Mayor Joseph J. Cisco, Ellport, Pennsylvania  
 Mayor Anthony J. Court, Ellwood City, Pennsylvania  
 Mayor Winfield Iobst, Emmaus, Pennsylvania  
 Mayor Dorothy H. Quinn, Emsworth, Pennsylvania  
 Mayor Joseph Sinnott, Erie, Pennsylvania  
 Mayor Gary Foster, Evans City, Pennsylvania  
 Mayor D. Gary Evans, Factoryville, Pennsylvania  
 Mayor Charles Moore, Falls Creek, Pennsylvania  
 Mayor Olive McKeithan, Farrell, Pennsylvania  
 Mayor Gary McBrien, Felton, Pennsylvania  
 Mayor Robert P. Frey, Folcroft, Pennsylvania  
 Mayor Jose Rosado, Fountain Hill, Pennsylvania  
 Mayor Kim Phillips, Frackville, Pennsylvania  
 Mayor Fred C. Moyer, Jr., Freeburg, Pennsylvania  
 Mayor Gerald C. Yob, Freemansburg, Pennsylvania  
 Mayor James E. Swartz, Jr., Freeport, Pennsylvania  
 Mayor Edward F. Burns, Girardville, Pennsylvania  
 Mayor Arnie Bowser, Greensboro, Pennsylvania  
 Mayor Roy Del Rosario, Hamburg, Pennsylvania  
 Mayor Linda Thompson, Harrisburg, Pennsylvania  
 Mayor Norm Hawkes, Hatboro, Pennsylvania  
 Mayor Ronald Cyphert, Hawthorn, Pennsylvania  
 Mayor John Hoerner, Highspire, Pennsylvania  
 Mayor Joseph R. Dodson, Hollidaysburg, Pennsylvania  
 Mayor Betty Esper, Homestead, Pennsylvania  
 Mayor Tim McGuire, Homewood Borough, Pennsylvania  
 Mayor Dee Dee Brown, Huntingdon Borough, Pennsylvania  
 Mayor John J. Zano, Hyde Park, Pennsylvania

Mayor George E. Hood, Indiana, Pennsylvania  
 Mayor Nicholas Yanosich, Industry, Pennsylvania  
 Mayor Gerald C. Croushore, Ingram, Pennsylvania  
 Mayor James C. Sanders, Jefferson, Pennsylvania  
 Mayor Ed Foley, Jenkintown, Pennsylvania  
 Mayor Donald Bosh, Knoxville, Pennsylvania  
 Mayor Sandra Green, Kutztown, Pennsylvania  
 Mayor Dorothy Shea Yazurlo, Laflin, Pennsylvania  
 Mayor Joseph Legnasky, Lake City, Pennsylvania  
 Mayor Rick Gray, Lancaster, Pennsylvania  
 Mayor Christopher Blaydon, Langhorne, Pennsylvania  
 Mayor Jayne C. Young, Lansdowne, Pennsylvania  
 Mayor Fred Feltenberger, Laureldale, Pennsylvania  
 Mayor Peter Poninsky, Leetsdale, Pennsylvania  
 Mayor Donald L. Rehrig, Leighton, Pennsylvania  
 Mayor Deborah A. Bargo, Lewistown, Pennsylvania  
 Mayor Nick Vay, Lincoln, Pennsylvania  
 Mayor John L. Mark, Liverpool, Pennsylvania  
 Mayor William D. Hart, Lykens, Pennsylvania  
 Mayor Randy Schlegel, Lyons, Pennsylvania  
 Mayor Thomas A. Bell, Mahaffey, Pennsylvania  
 Mayor Gerard J. McGlone, Jr., Malvern, Pennsylvania  
 Mayor Eric B. Phillips, Manheim, Pennsylvania  
 Mayor David Sturgess, Manor, Pennsylvania  
 Mayor Alexander J. Chelik, Mayfield, Pennsylvania  
 Mayor Terry S. Bennett, McDonald, Pennsylvania  
 Mayor Weslee A. Clapper-Krepps, McKean, Pennsylvania  
 Mayor John Christopher Soff, Meadville, Pennsylvania  
 Mayor Bob McMahon, Media, Pennsylvania  
 Mayor Ethel I. Kellerman, Milesburg, Pennsylvania  
 Mayor Thomas S. Kramer, Millbourne, Pennsylvania  
 Mayor Richard Trostle, Mohnton, Pennsylvania  
 Mayor John P. Antoline, Monaca, Pennsylvania  
 Mayor Mary Jo Smith, Monessen, Pennsylvania  
 Mayor John Dorin, Montoursville, Pennsylvania  
 Mayor Maureen A. Piselli, Morton, Pennsylvania  
 Mayor Timothy M. Allison, Mount Union, Pennsylvania  
 Mayor Raymond Bodnar, Munhall, Pennsylvania  
 Mayor Stephen Szymusiak, Nanty-Glo, Pennsylvania  
 Mayor Joseph Taylor, New Milford, Pennsylvania  
 Mayor Frances Tkach, New Philadelphia, Pennsylvania  
 Mayor Nicholas W. DeSantis, New Stanton, Pennsylvania  
 Mayor Mary M. Hetrick, Newport, Pennsylvania  
 Mayor Lee I. Hall, North Charleroi, Pennsylvania  
 Mayor Thomas Reenock, Northampton, Pennsylvania  
 Mayor George F. McCloskey, Norwood, Pennsylvania  
 Mayor Michele Petrini Avvisato, Old Forge, Pennsylvania  
 Mayor Austin Scandiber, Orwigsburg, Pennsylvania  
 Mayor Lewis Paul Cowher, Osceola Mills, Pennsylvania  
 Mayor Geoffrey L. Henry, Oxford, Pennsylvania  
 Mayor Fred Carpenter, Palmyra, Pennsylvania  
 Mayor William McCall, Parker, Pennsylvania  
 Mayor Ardele R. Gordon, Parkside, Pennsylvania  
 Mayor Robert Winkler, Pennndel, Pennsylvania  
 Mayor Michael Nutter, Philadelphia, Pennsylvania  
 Mayor Kimberly D. Brown-Zerbe, Pine Grove, Pennsylvania  
 Mayor Luke Ravenstahl, Pittsburgh, Pennsylvania  
 Mayor Bonnie Heath, Pottstown, Pennsylvania  
 Mayor John D.W. Reiley, Pottsville, Pennsylvania  
 Mayor Vaughn D. Spencer, Reading, Pennsylvania  
 Mayor Dr. Guillermo Udarbe, Ridgway, Pennsylvania  
 Mayor Desiree D. DeNicola, Roseto, Pennsylvania  
 Mayor Edwin W. Rosenberry, Saxton, Pennsylvania  
 Mayor Thomas C. Hufnagle, Sellersville, Pennsylvania  
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 Mayor Boyd E. Paul, Snow Shoe, Pennsylvania  
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 Mayor John Reynolds, Souderton, Pennsylvania  
 Mayor James C. Kennedy, South Coatesville, Pennsylvania  
 Mayor Clyde R. Wadsworth, South Fork, Pennsylvania  
 Mayor Elizabeth A. Goreham, State College, Pennsylvania  
 Mayor Thomas F. Acri, Steelton, Pennsylvania  
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 Mayor William A. Boyd, Stoystown, Pennsylvania  
 Mayor Harold Randy Davis, Strattenville, Pennsylvania  
 Mayor Charles Baughman, Stroudsburg, Pennsylvania  
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 Mayor Paul R. McArdle, Summit Hill, Pennsylvania  
 Mayor David L. Persing, Sunbury, Pennsylvania  
 Mayor Richard H. Lowe, Swarthmore, Pennsylvania  
 Mayor Luke Duignam, Tatamy, Pennsylvania  
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 Mayor Charles Harper, Three Springs, Pennsylvania  
 Mayor Kenneth Danser, Timblin, Pennsylvania  
 Mayor Francis B. Zalewski, Trainer, Pennsylvania  
 Mayor William Allar, Tremont, Pennsylvania  
 Mayor J. David Cutchinal, Tullytown, Pennsylvania  
 Mayor LeAnn Hritz, Tunnelhill, Pennsylvania  
 Mayor Adam R. Forgie, Turtle Creek, Pennsylvania  
 Mayor Thomas Micozzie, Upper Darby, Pennsylvania  
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 Mayor Esther Cotner, Washingtonville, Pennsylvania  
 Mayor Richard A. Starliper, Waynesboro, Pennsylvania  
 Mayor Carolyn T. Comitta, West Chester, Pennsylvania  
 Mayor Gerald W. Gross, West Easton, Pennsylvania  
 Mayor Ralph Harrington, West Elizabeth, Pennsylvania  
 Mayor Frank Schmidt, West Hazleton, Pennsylvania  
 Mayor John W. Dindak, West Homestead, Pennsylvania  
 Mayor Mary E. Popovich, West Newton, Pennsylvania  
 Mayor John Henry, West View, Pennsylvania  
 Mayor Dick Vargeson, Westfield, Pennsylvania  
 Mayor James F. Nowalk, Whitehall Borough, Pennsylvania  
 Mayor Edward D. Hozza, Jr., Whitehall Township, Pennsylvania  
 Mayor Thomas M. Leighton, Wilkes-Barre, Pennsylvania

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 Mayor David Perruso, Wilson, Pennsylvania  
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 Mayor Charles Lombardi, North Providence, Rhode Island  
 Mayor Donald Grebien, Pawtucket, Rhode Island  
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 Mayor Thomas W. Taylor, Maryville, Tennessee  
 Mayor A C Wharton, Memphis, Tennessee  
 Mayor Tom Beehan, Oak Ridge, Tennessee  
 Mayor Bill Lusk, Signal Mountain, Tennessee  
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 Mayor Tony Martinez, Brownsville, Texas  
 Mayor Carl D. Sherman, DeSoto, Texas  
 Mayor Annise D. Parker, Houston, Texas  
 Mayor Richard Ward, Hurst, Texas  
 Mayor Dave Claunch, West Lake Hills, Texas  
 Mayor Dana Williams, Park City, Utah  
 Mayor John Hollar, Montpelier, Vermont  
 Mayor Christopher C. Louras, Rutland City, Vermont  
 Mayor William B. Euille, Alexandria, Virginia  
 Mayor Faye Prichard, Ashland, Virginia  
 Mayor Satyendra Singh Huja, Charlottesville, Virginia  
 Mayor McKinley Price, Newport News, Virginia  
 Mayor Paul D. Fraim, Norfolk, Virginia  
 Mayor Brian A. Moore, Petersburg, Virginia  
 Mayor Robert W. Lazaro, Jr., Purcellville, Virginia  
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 Mayor Garland D. Walton, Connell, Washington  
 Mayor Will Ibershof, Duvall, Washington  
 Mayor Liz Reynolds, Enumclaw, Washington  
 Mayor Gary S. Jensen, Ferndale, Washington  
 Mayor Ava Frisinger, Issaquah, Washington  
 Mayor Ron Poulson, Kalama, Washington  
 Mayor David M. Ferguson, Mesa, Washington  
 Mayor Daniel N. Mork, Millwood, Washington  
 Mayor James F. Gerwig, Morton, Washington  
 Mayor Dennis Palmer, Oakesdale, Washington  
 Mayor Spencer Nichols, Pe Ell, Washington  
 Mayor Paul Warden, Prosser, Washington  
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 Mayor Matthew Larson, Snoqualmie, Washington  
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 Mayor Kurt Sonnentag, Middleton, Wisconsin  
 Mayor Tom Barrett, Milwaukee, Wisconsin  
 Mayor Steve Scaffidi, Oak Creek, Wisconsin  
 Mayor John T. Dickert, Racine, Wisconsin  
 Mayor James E. Tipple, Wausau, Wisconsin  
 Mayor Vincent C. Gray, Washington, D.C.

Dear Senate Judiciary Committee:

I would like to submit testimony in regard to Diane Feinstein's bill, SB 150 I am writing to you today because in light of the Sandy Hook School shooting, I have become a one issue voter on a mission. You see I knew Nancy Lanza, she has been in my home and my son played at her home, we were neighbors on Yogananda St. I believe Nancy was a responsible gun owner and would be horrified to know what her son did. It's for this reason that I believe we need to pass stricter gun laws outlined in Ms. Feinstein's bill because although the owner may practice responsible gun ownership, the guns could fall into the wrong hands.

We must do everything in our power to prevent another Newtown massacre. It is time to protect our children, not gun manufacturers. We must establish sensible gun laws.

The gunman at Sandy Hook school used a military style weapon that enabled him to fire off many rounds quickly and shot himself as soon as law enforcement arrived. If he had been able to fire off less rounds, he would not have been able to shoot as many innocent children before the police showed up. Six children at Sandy Hook School were able to squeeze past the gunman in a doorway because he had to stop to reload. How many more would have been spared had his magazines been smaller? Think of those children, who had to watch their teacher and classmates brutally murdered in front of their eyes, now think of your own children. Think of your grandchildren. Think about the parents and spouses who have to live with the horror of knowing their children spent their last few minutes in terror and in pain as the bullets shredded their flesh. Think about the survivors of that massacre, also victims, who will have to deal with their own mental health issues for decades to come.

I am not asking for anyone to give up their right to bear arms, but isn't it worth trying these simple measures even if it means sparing the life of a handful of children? We are the majority here, not the fanatical few gun owners who come out in force for these hearings. I urge you to

Sincerely,  
Gina McDade

# MomsRising.org

CONTACT: [Gretchen Wright](#) or [Molly Tomlinson](#)  
202/371-1999

## **Testimony of Kristin Rowe-Finkbeiner** **Co-Founder, Executive Director, MomsRising**

Hearing on Assault Weapons Ban of 2013 (S. 150)

Hearing before the Senate Committee  
on the Judiciary  
February 27, 2013

Good morning. I am Kristin Rowe-Finkbeiner, co-founder and Executive Director of MomsRising. MomsRising is a 1.1-million strong, online and on-the-ground grassroots organization working to improve the lives and the health of American families.

We have advocated for paid family leave, flexible work options, environmental and product safety, affordable childcare, and many other policies that families need. We also support common sense gun laws to better protect our families from gun violence. MomsRising has a diverse national membership. And we believe, as do our members, that we can wait no longer to stop the senseless killings that have plagued our nation for too long.

In the wake of so many recent gun violence tragedies -- from Sandy Hook Elementary to Aurora, Colorado -- it's difficult to see how anyone would argue against the need for greater gun safety.

Allow me for a moment to cite a few statistics. Nationally, 30 people are killed each day by guns. About one in five Americans know a recent victim of gun violence and twice as many worry about becoming a victim, according to a recent Kaiser Health Tracking Poll. Of the 20 percent of Americans who reported knowing a victim of gun violence in the past three years, 62 percent said the victim was a friend, family member or even themselves.

According to a recent New England Journal of Medicine article, guns are the second leading cause of death in young people aged 1 to 24 years old. These include children like the 20 young kids gunned down at Sandy Hook Elementary School. Teenagers like Hadiya Pendleton, who, just days after she participated in the presidential inauguration, was murdered in Chicago, one of the many cities burdened by killings that don't usually make the news.

We should be outraged by these statistics, by these day-in-and-day-out tragedies.

That's why we wanted to lend our voices in support of the Assault Weapons Ban of 201 (S. 150). This bill will prohibit the sale, manufacture, transfer and importation of 157 of the most commonly-owned military-style assault weapons. It also bans large-capacity magazines and other ammunition feeding devices that hold more than 10 rounds of ammunition. These are important steps in the right direction.

For months, our members have been writing us with their stories and with their calls for us to step up the pressure. These are excerpts from just a few of the thousands of letters we have received.

Avia from New York, New York said:

*"With the deaths of the children and school staff, this time feels different to me. Homes with guns in them have three times more fatalities than those without. I feel that if my dad hadn't had a shotgun, my brother would not have killed himself."*

Susan from Westminster, Maryland wrote:

*"There are NO words to truly explain how a parent feels when you are told that your child has been shot! Even now writing this nearly 9 years later, [after her daughter was shot] I have PTSD and am in tears!...There is NO reason that anyone, aside from a military person, should have an automatic weapon that shoots so many rounds."*

Ashley from Berkeley, California wrote:

*"The increase in mass shootings this year makes me afraid for my children's safety and the future. The time is now to get real about the variety changes we need to make our communities safe."*

Some of the MomsRising members we've heard from are also gun owners and NRA members, and they, too, are deeply concerned about the outdated gun safety laws that fail to protect our children and our communities. This bill provides a much-needed remedy to the problem. It takes action in response to the countless pleas for help from parents and children across the nation.

To be clear: This isn't about banning guns; this is about gun safety and responsibility, and making sure that weapons for mass killing aren't in public spaces or near our children. Parents shouldn't have to hesitate, even slightly, wondering if our kids will be safe when we drop them off at school, the mall, or the movies.

In January, MomsRising was among several groups that collected and delivered nearly 300,000 petition signatures to Walmart urging the retailer to pull assault weapons and ammunition from their shelves. On February 14 of this year, we delivered gun safety Valentine's Day messages, as well as a petition with more than 150,000 signatures, to Congress, calling on members to support legislation that would end gun violence and protect ALL our children.

If I may end on a personal note: I, too, have experienced the fear and anxiety associated with gun violence. More than once in the last year, I've received a call that no parent ever wants to get from their child's school saying that the school is in lockdown because of a nearby threat.

The first time was in May when there was a mass shooting at Café Racer in Seattle, which is a short distance from the school my children attend. The gunman had fled on foot. The second time was related to an armed bank robbery just blocks away.

This is not the sort of society we want to live in.

Laws that would give more parents and more kids peace of mind are desperately needed. We thank Senator Feinstein for introducing the Assault Weapons Ban of 2013 and urge all members of Congress to support this crucial legislation.

# # # #

*MomsRising.org is an online and on-the-ground grassroots organization of more than a million people who are working to achieve economic security for all families in the United States. MomsRising is working for paid family leave, flexible work options, affordable childcare, and for an end to the wage and hiring discrimination which penalizes so many others. MomsRising also advocates for health care for all, toxic-free environments, and breastfeeding rights so that all children can have a healthy start. Established in 2006, MomsRising and its members are organizing and speaking out to improve public policy and to change the national dialogue on issues that are critically important to America's families. In 2012, Forbes.com named MomsRising's web site as one of the Top 100 Websites For Women for the third year in a row. In 2013, Working Mother magazine included MomsRising on its "Best of the Net" list.*



Hello.

My name is Samantha Murphy and I currently reside in Roswell, Georgia. I'm writing to advise that I support SB 150, Senator Feinstein's bill to ban assault weapons and high capacity magazine bans. I would also like to demand a vote for this bill to be passed. We have lost too many children to let this go even one more day. Other countries have proven the effectiveness of such bans and we demand action in America. Our children's future depends on it.

Thank you very much!!

Samantha

--

Samantha Murphy



National Association of Social Workers  
Office of the Executive Director

...the power of social work

Elizabeth J. Clark, PhD, ACSW, MPH  
Executive Director

January 17, 2013

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the National Association of Social Workers (NASW), the largest professional association of social workers in the United States with 145,000 members, we offer our support for the Assault Weapons Regulatory Act of 2013. Banning military-style assault weapons and high-capacity ammunition feeding devices will allow for a safer America. We commend your swift and appropriate response to the senseless tragedy in Newtown, Connecticut.

As you continue your work to prevent further tragedies from occurring, we encourage you and your colleagues to identify opportunities for investing in mental health services. NASW has been a longtime advocate for greater access to mental health services and mental health parity, and we believe that this is the most important component of the broader conversation regarding gun safety. We have learned from these increasing incidents of deadly violence that mental health prevention and treatment for those who need it most would have been the best investment possible.

Please call upon NASW if we can serve as a resource. I can be reached at 202.336.8200.

Sincerely,

Elizabeth J. Clark, PhD, ACSW, MPH  
Executive Director



## PRESS STATEMENT

FOR IMMEDIATE RELEASE

**DATE** January 24, 2013

**CONTACT** Shannon Andrea, Director of Media Relations  
National Parks Conservation Association, P: 202.454.3371; C: 202-365-5912

**STATEMENT BY** Tom Kiernan, President, National Parks Conservation Association

**STATEMENT** **National Parks Group Backs Senator Feinstein's Bill  
Calling For a Federal Ban on Assault Weapons**

"Today, Senator Feinstein introduced the Assault Weapons Ban of 2013 that seeks to stop the sale, transfer, importation and manufacturing of more than 150 specifically-named assault weapons and ban an additional group of weapons that accept detachable ammunition magazines and have one or more military characteristics. The bill would also ban high-capacity ammunition magazines. If passed, this bill would apply to our national parks. The National Parks Conservation Association strongly supports it and encourages Congress to vote for it."

"Nearly four years ago, a law was enacted allowing guns in national parks, specifically authorizing people to carry firearms into national parks to the extent allowed under state law. We aggressively opposed the "guns in parks" law which made it legal for people to carry assault weapons into many national park units. Some states also allow for open carry of such weapons."

"National parks are places where families, wildlife watchers, recreationists, international travelers and so many others go to enjoy the scenic beauty, historical meaning and cultural diversity of our national heritage. Assault weapons have no place in the National Park System unless they are in a museum. We applaud and support Senator Feinstein's effort to make our national parks safer for all visitors and wildlife."

###



1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

Dennis Van Roekel  
*President*

Lily Eskelsen  
*Vice President*

Rebecca S. Pringle  
*Secretary-Treasurer*

John Stocks  
*Executive Director*

January 23, 2013

Senator Dianne Feinstein  
United States Senate  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the more than three million members of the National Education Association – dedicated educators who serve and protect millions of children every day – we would like to offer our support for your legislation to ban assault weapons and high-capacity magazines. We thank you for your continued leadership on this most urgent issue.

From Paducah, Kentucky in 1997 to Newtown just last month, every member of the National Education Association grieves when students and educators are victims of horrific violence. We are a family, so we grieve for the parents who have lost children, and we grieve for the families of the educators who time and time again put themselves between bullets and their students. Now, more than ever, we stand ready to speak out and mobilize to protect our students and communities from further pain and needless violence.

NEA supports a multi-pronged approach to gun violence prevention. Your proposal to ban assault weapons and high capacity clips is an essential piece of this approach. Assault weapons and high-capacity magazines should be used by soldiers and police officers.

Since 1979, when data were first collected, guns have taken the lives of nearly 120,000 American children and teenagers. While not all of these deaths could have been prevented by an assault weapons ban, it is clear that such a ban, when in effect, did make a real difference. According to a study published by the Brady Center in 2004, the federal assault weapons ban reduced the incidence of assault weapons used in crimes. In the five-year period (1990-1994) before enactment of the ban, assault weapons named in the Act constituted 4.82% of the gun crimes traced by ATF nationwide. In the post-ban period after 1995, these assault weapons made up only 1.61% of the guns ATF has traced to crime incidences – a drop of 66% from the pre-ban rate.

Your proposals are very much in line with the views of NEA members. A new NEA member poll indicates overwhelming support for stronger gun violence prevention laws, including background checks and bans on assault weapons and high-capacity magazine clips.

Addressing gun violence also requires a focus on bullying prevention and much greater access to mental health services, so educators and families can identify problems and intervene before it is too late. We hope Congress will look at each of these issues in devising a comprehensive strategy.

Again, we thank you for your leadership on this important issue and look forward to working with you to prevent more senseless tragedies.

Sincerely,

Mary Kusler  
Director of Government Relations



**Written Testimony on the Assault Weapons Ban of 2013 (S. 150)  
submitted by the National Physicians Alliance  
to Senator Dianne Feinstein and the Senate Judiciary Committee,  
March 4, 2013**

Thank you for the opportunity to submit written testimony regarding the Assault Weapons Ban of 2013 on behalf of the National Physicians Alliance. A non-profit organization representing 15,000 physicians across medical specialties, the NPA works to improve health and well-being, and to ensure equitable, affordable, high quality health care for all. The NPA views gun violence as a public health crisis and the assault weapons ban as a vital component of a broad, comprehensive response.

Patients have long trusted physicians to advise them on more than short-term clinical needs and many look to the medical profession to guide policy-makers on national, health-related threats. Patients expect physicians to work within the science and evidence base to support policies that protect public health.

Gun violence is a public health issue that has reached epidemic proportions in this country, affecting our patients, our neighbors, our communities—indeed all Americans. The Newtown tragedy is galvanizing a national understanding of the pervasive danger that guns pose and of the toll they take every day.

Improving access to mental health care services and establishing true mental health parity are important and necessary aims in response to our gun violence epidemic, but policy-makers should not confuse or substitute proposals in this area for additional evidence-based and urgently needed gun violence prevention measures.

Gun violence is indisputably an issue of health, where science and evidence must guide policy. A guiding principle of the National Physicians Alliance is that health is determined by a wide variety of influences beyond biology, including familial, social, psychological, environmental, economic, political, legal, cultural and spiritual factors. Understanding and addressing these complex connections is a duty of our profession.

**Given the facts, science, and existing evidence-base surrounding gun violence, the NPA strongly endorses the following preventive measures, achievable through policy:**

1. Establish a universal system that requires a background check for all persons buying or transferring a firearm or purchasing ammunition, with a requirement to report all lost or stolen firearms.

2. Prohibit high-risk individuals from purchasing firearms by focusing on the evidence which demonstrates that people with a history of violence, threats of violence, or alcohol/substance abuse have an increased risk of violence. Those individuals who have a history of stalking, a restraining order, or drug-trafficking also should be prohibited from buying firearms.
3. Federal restrictions on gun purchases with regard to mental health should focus on the dangerousness of the individual, and states should be encouraged to provide information to the federal background check system about disqualifying conditions/episodes.
4. Enact comprehensive state and federal bans on assault weapons and high capacity ammunition magazines.
5. Financial incentives should be provided to gun manufacturers to develop childproof and personalized guns.
6. Expand the jurisdiction of the Consumer Product Safety Commission or the Bureau of Alcohol, Tobacco and Firearms to regulate guns as consumer products and establish regulations requiring product safety features, such as childproof and personalized guns.
7. Protect the patient-physician relationship by removing all gag rules that apply to clinical encounters. The patient and physician must be free to discuss any issue, including gun safety.
8. Build an evidence-based approach to gun violence prevention, which includes restoration of robust funding and training for epidemiological research in this area (e.g. through the National Institutes of Health and the Centers for Disease Control and Prevention) and gathering data that tracks gun-related deaths and injuries, safety interventions, and the impact of measures to reduce the incidence of gun violence over time.
9. Ensure that violence prevention including gun safety is a core part of the training and continuing professional education of doctors, nurses, social workers, chaplains, teachers, and other professionals.
10. Help communities examine and take action on the multiple factors that shape their health and safety by providing funding for research at local, state, and national levels that addresses prevention of gun violence and the root causes contributing to trauma, injury, and death by guns.

We can no longer sit back while thousands of children and adults die each year as a result of gun violence. The Assault Weapons Ban of 2013 begins to address the factors that contribute to more than 30,000 gun-related deaths each year in our country. The NPA strongly supports this important piece of legislation and urges Congress to approve it.

**Contacts:**

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**President**  
**National Physicians Alliance**  
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**Jeff Huebner, MD**  
**Vice President of Policy**  
**National Physicians Alliance**  
[Jeff.Huebner@npalliance.net](mailto:Jeff.Huebner@npalliance.net)



Ohio Coalition Against Gun Violence

January 25, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

This letter is to express my support of your legislation S. 150, the Assault Weapons Ban, to reinstate the ban military-style assault weapons and large-capacity ammunition feeding devices.

In recent years incidents of mass gun violence, including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, in our shopping malls and theaters, and most of all, in our schools. S. 150 offers a sensible solution that will take these weapons out of our cities and neighborhoods.

I support this common-sense gun safety measure to protect our communities and reduce violence. Please add my name/organization to the list of those endorsing S. 150.

Sincerely,

Ohio Coalition Against Gun Violence  
Toby Hoover, Executive Director

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2013 FEB -6 AM 10:26

The Rev. John W. Bennison, re: D

January 29, 2013

Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein,

I fully support and encourage your efforts for new sane and sensible gun control legislation. I referred to your renewed efforts with regard to the assault weapons ban in this recent commentary.

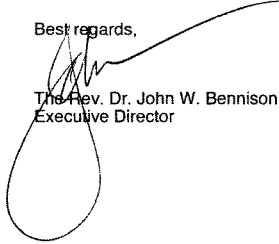
"We love our guns, and what they represent. We love the cheap, readily available and disproportionate amount of personal power guns offer in the hands of everyone and anyone who wants it, for whatever reason. If one doubts that, just consider: The anticipated uphill battle to ban assault-style weapons and high-capacity magazines that might simply pose a reloading inconvenience to the next mass shooter and merely reduce – not eliminate – the casualty count is ludicrous in and of itself.

To the usual rebuttal stricter gun controls will not stop the crazed among us from obtaining their Bushmaster, their bullet-proof vests and ammunition stockpiles, I say it is a hollow, fallacious argument. But furthermore, I don't care. We have erred so long on the side of doing nothing, might it not be time to err instead on the side of doing something; regardless of its possible ineffectiveness?"

I encourage you to stand firm in your convictions of what is necessary for the common good. Do not let the haunting memory of Sandy Hook fade with the cool detachment of legislative expediency by your colleagues.

If I can help your efforts from California, let me know.

Best regards,

  
The Rev. Dr. John W. Bennison  
Executive Director

PATHWAYS FAITH COMMUNITY is an incorporated California non-profit Religious Organization  
2311 Walnut Boulevard • Walnut Creek, CA 94597 • 925.787.6965 • email: [jb@wordsnways.com](mailto:jb@wordsnways.com)





11th Annual Emergency Physicians for the Prevention of Nuclear War

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1111 Fourteenth Street, Northwest Suite 700  
Washington DC 20005  
telephone (202) 667-4260  
email: [cthomasson@psr.org](mailto:cthomasson@psr.org)

March 4, 2013

The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

We are writing this letter to express our full support for your Assault Weapons Regulatory Act of 2013. Physicians for Social Responsibility (PSR) is the U.S. affiliate of International Physicians for the Prevention of Nuclear War, winner of the 1985 Nobel Peace Prize. We have over 35,000 members and activists, including health care providers who treat victims of gun violence on a daily basis.

Since 1982, there have been at least 62 mass shootings in the United States, including the recent Sandy Hook Elementary School massacre in Newtown, Connecticut. Most of these mass shootings have been committed with assault weapons fed by high capacity magazines. These weapons and magazines are designed to kill the maximum number of enemy combatants in the shortest period of time. PSR believes that there is no legitimate civilian use for such weapons systems.

We appreciate your leadership in introducing the Assault Weapons Regulatory Act, which will reduce the number of innocent people killed in mass shootings. As you are aware, though, while mass shootings are a serious public health problem, they account for small percentage of the total number of innocent civilians killed by guns in the United States. On an average day, 86 people, including five youth age 18 and under, are killed by guns in our country. The Assault Weapons Regulatory Act is just one step toward stopping our national epidemic of firearm related deaths and injuries. We look forward to working with you to foster additional sensible firearm legislation similar to the laws in other democratic, industrialized countries that have much lower rates of gun related deaths while still allowing legitimate hunters and target shooters to practice their sports.

Yours truly

Catherine Thomasson, MD  
Executive Director

Bill Durston, MD  
Emergency Physician and Board Member



February 5, 2013

Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, DC 20510

Via email: [Matthew\\_Nelson@feinstein.senate.gov](mailto:Matthew_Nelson@feinstein.senate.gov)

Dear Senator Feinstein,

Thank you for championing the cause on restricting the sale of assault weapons. We believe assault weapons are best left to our military and have no place in the lives of everyday United States citizens. Additionally, we find it difficult to imagine hunters needing to use an assault rifle. There is a sport to hunting. Hunters already have superior firepower and optics. Using twenty or thirty rounds to take out an animal is nothing more than showcasing overwhelming force on an unarmed being.

We understand restricting the sale of assault weapons is not the only solution to helping curb gun violence in this country. However, it is an important piece of the solution.

You have our full support.

Best regards,

Jack Stephens  
President  
Precision Remotes LLC  
Richmond, California 94804



Contact:  
James Martinez  
Cell: (571) 329-9352

**National PTA Commends Members of Congress for  
Proposed Ban on Military-Style Assault Weapons and High-Capacity  
Magazines**

**Reaffirms gun violence prevention priorities**

**ALEXANDRIA, VA. (January 24, 2013)**—The following statement can be attributed to National PTA® President Betsy Landers:

National PTA commends Members of Congress for taking swift legislative action on gun violence prevention and supports today's introduction of the Assault Weapons Ban Act of 2013.

Under the leadership of Senator Diane Feinstein (D-Calif.), the group introduced legislation to limit the availability of military-style assault weapons and high-capacity ammunition feeding devices.

The proposed legislation falls in line with National PTA's positions on gun violence prevention and National PTA agrees with Sen. Feinstein in that Congress must act to:

- Ban the sale and possession of military-style assault weapons;
- Ban large-capacity ammunition feeding devices capable of accepting more than 10 rounds;

PTA is confident that enactment will improve public safety while protecting the Second Amendment.

National PTA believes this is a significant first step in ensuring a safe learning environment for all students. We look forward to continued work with Congress to enact and implement reasonable gun violence prevention measures, including consideration of legislative solutions that provide safety training and comprehensive mental health services while keeping schools completely gun-free.

**About National PTA**

National PTA® comprises millions of families, students, teachers, administrators, and business and community leaders devoted to the educational success of children and the promotion of parent involvement in schools. PTA is a registered 501(c)(3) nonprofit association that prides itself on being a powerful voice for all children, a relevant resource for families and communities, and a strong advocate for public education. Membership in PTA is open to anyone who wants to be involved and make a difference for the education, health, and welfare of children and youth.

Chairman Durbin and Senate Judiciary Subcommittee Members,

My name is Barbara Richardson. I live in Sandy Hook Connecticut.

I am the parent of a son who attended our much-loved Sandy Hook Elementary School. In our neighborhood are families who lost children and also the home of the Lanzas. I am a sister to someone with mental illness and depression who was narrowly averted from purchasing a gun. I am a registered nurse with long experience in the trauma caused by guns in suicides, accidents and crime, as well as the decades long effects of gun violence on families.

The causes of gun violence are complex, and solutions require rational, well-enforced gun laws as well as better care for mental illness and attention to security. It will require of gun owners and sellers individual responsibility and limitation of some freedoms in the interest of public safety. The government does this with other potentially dangerous consumer products such as cars, ladders etc. I remember when the law was passed making seat belt wearing mandatory - how annoying to be told what to do by the government. How silly that seems now with so many lives saved.

The popularization in recent years of military style rapid-fire semi-automatic rifles with large capacity magazines is a major factor in the Sandy Hook School massacre. If Adam Lanza's mother did not have such weapons it is doubtful that the massacre would have occurred.

I strongly support Senator Feinstein's bill to ban assault weapons and high capacity ammunition magazines. It is essential as well to establish Federal universal background checks with all gun sales. We need research and data in order to implement the best policies. We need to empower law enforcement and the department of ATF to prevent and stop illegal guns and straw purchases. Unfortunately, the gun industry including the NRA and NSSF have for years used their money and political influence to undermine research into gun violence, weaken gun laws and undermine the ability of law enforcement to stem gun violence on the national, state and local level.

Wayne LaPierre said in a speech "The guys with the guns make the rules". I hope that, with the wellbeing and safety of the public in mind, you prove him wrong.

Thank you

Barbara B Richardson

[REDACTED]

Sandy Hook, CT 06482



Laura Fisher  
Co-founder, MOURN

[REDACTED]  
[mournmoms@gmail.com](mailto:mournmoms@gmail.com)

The Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Human Rights  
Chairman Dick Durbin

March 5, 2013

Dear Senate Judiciary Committee Members:

Thank you for the opportunity to submit testimony for the hearing on the Assault Weapons Ban of 2013 held on Feb. 27. As co-founder of Mothers United for Reform Now, I am speaking on behalf of 80 members in the Northern Virginia area. MOURN was founded on Dec. 21 by Laurie Chidlow and myself in response to the horrific shooting that occurred in Newtown, Conn. Our mission is to mobilize mothers to advocate for gun violence prevention measures that make children and communities safer, in lasting tribute to the victims of gun tragedies. More information about MOURN can be found at [www.usmourn.com](http://www.usmourn.com).

We are united in our belief that there are steps that Congress can take to make our country a safer place without infringing upon Second Amendment rights. The first step in restoring commonsense to our nation's gun policy is to pass Sen. Feinstein's Assault Weapons Ban of 2013 (S. 150). The members of MOURN support the following actions to prevent gun violence:

1) Institute an Assault Weapons and High Capacity Magazine Ban by passing S. 150

Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. These tools of mass carnage are useful for one and only one purpose – to kill as many people as possible in the shortest period of time. In fact, mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

## 2) Require Universal Background Checks on both Guns and Ammunition

Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System. Currently, an estimated 40 percent of gun sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal responsibility to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

## 3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

## 4) Improve Mental Health Reporting

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get anywhere near a gun.

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions above are immediate steps that would help prevent gun violence.

The American people, especially mothers, are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is unacceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus.

Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done for our country and for our children. Let's get this done now.

Sincerely,

Laura Fisher  
Co-founder  
Mothers United for Reform Now



13 JAN 30 PM 3:02

THE CITY OF SAN DIEGO

VIP- Jonathan  
& NeilIN REPLYING  
PLEASE GIVE  
OUR REF. NO.  
1914000001

January 17, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510


Dear Senator Feinstein:

This letter is to express my support for the Assault Weapons Regulatory Act, to prohibit military-style assault weapons and large-capacity ammunition feeding devices.

In recent years incidents of mass gun violence, including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, in our shopping malls and theaters, and most of all, in our schools. The Assault Weapons Regulatory Act offers a sensible solution that will take these weapons out of our cities and neighborhoods while protecting the rights of legitimate hunters and current gun owners.

I support this common-sense gun safety measure to protect our communities and reduce violence.

Sincerely,

  
 William M. Landsdowne  
Chief of Police


Office of the Chief of Police  
1401 Broadway • San Diego, CA 92101-5729  
Tel: 619.594.3000



BOARD OF SUPERVISORS

1055 MONTEREY, ROOM D430 • SAN LUIS OBISPO, CALIFORNIA 93408-1003 • 805.781.5450



BRUCE GIBSON  
SUPERVISOR DISTRICT TWO

January 29, 2013

The Honorable Dianne Feinstein  
United States Senator  
330 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

I write in support of your legislation regarding the Assault Weapons Ban, which would reinstate the ban on military-style assault weapons and large-capacity ammunition feeding devices.

In recent years, incidents of mass gun violence including the tragedy in Newtown, Connecticut, have served as terrible reminders of the senseless loss of life and extreme harm these weapons are capable of. Semi-automatic and high-capacity assault weapons have no place on our streets, where they have been the tools of unimaginable violence against innocent people. An Assault Weapons Ban offers a sensible solution that will take these weapons out of our cities and neighborhoods while protecting the rights of legitimate hunters and current gun owners.

I support this common-sense gun safety measure to protect our communities and reduce violence. Please add my name to the list of those endorsing this proposed new legislation regarding the ban on assault weapons.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Gibson", written over a horizontal line.

BRUCE GIBSON  
Supervisor, District Two  
San Luis Obispo County



## THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
TELEPHONE (202) 293-7330  
FAX (202) 293-2352  
TDD (202) 293-9445  
URL: [www.usmayors.org/uscm](http://www.usmayors.org/uscm)

### SANDY HOOK PRINCIPLES

#### THE CONTEXT

In solemn remembrance of the 20 children and 6 adults whose lives were taken during the tragic shooting massacre of December 14, 2012, at Sandy Hook Elementary School, and in remembrance of too many others who have lost their lives to gun violence before and since, the Sandy Hook Principles are hereby established as one idea that can help make America safer. These Principles are a call to action for corporations to heed the basic core values of American citizens in promoting the health, safety and well-being of our communities.

#### THE PREAMBLE

The objective of the Sandy Hook Principles is to encourage positive corporate behavior by gun and ammunition manufacturers, distributors and retailers by establishing a baseline standard for responsible conduct and business practices to help ensure maximum safety for our citizens. Accordingly, the Principles promote progressive actions by these companies towards eliminating the substantial and unjustified risk to human health and life associated with inadequately regulated firearm use. The Principles address five specific categories of reform in terms of procedures, coordination, management, safety and technology.

These Principles are created in an effort to work proactively with the gun industry to seek commonsense solutions in response to the proliferation of gun violence in America that has caused immeasurable harm to our citizens. Implicit in these Principles lies the belief that adjustments and changes in certain business practices, policies or conduct by the gun industry can improve the health, safety and well-being of our communities. In these Principles, the gun industry is being called upon to be part of the solution to the public safety and public health challenges we face in cities and towns across the nation and presents an opportunity for significant progress towards the imperative objectives of keeping firearms out of the wrong hands, and making guns and ammunition safer for authorized users.

It is hereby affirmed that the overwhelming majority of gun owners in America are responsible, law abiding and safety-conscious citizens. Through the widespread adoption of these Principles, an appropriate balance is sought between protecting the rights of gun ownership and the rights of our citizens to be safe and secure. These rights must complement each other.

The Principles apply to gun and ammunition manufacturers, distributors and retailers, with an exception for the production and sale of guns or ammunition to local, state and federal law enforcement agencies and all U.S. military forces for use in conducting their official duties. Local and state governments, colleges and universities, hedge funds, pension funds, venture capital funds and all other organizations that have a financial relationship with private corporations may request that companies affiliated with the gun industry review and adopt the Sandy Hook Principles. In the event an affiliated company does not adopt the Principles, organizations may choose to reexamine that financial relationship.

**THE PRINCIPLES**

As a company which endorses the Sandy Hook Principles we will respect the law, and as a responsible corporate member of society we will apply these Principles with integrity consistent with the legitimate role of business. We will develop and implement company policies, procedures, training and internal reporting structures to ensure commitment to these Principles throughout our organization. We believe the application of these Principles will improve the health, safety and well-being of communities across America.

Accordingly, we will:

- Support and promote restrictions on firearm and ammunition sales, transfers and possession to keep guns out of the hands of children (unless authorized), persons with mental illness or mental health challenges (unless authorized), criminals, domestic or international terrorists and anyone else prohibited from possessing them under federal law.
- Conduct background checks on all gun and ammunition sales or transfers and support the establishment of a federal universal background check system for every such transaction.
- Reevaluate policies regarding the sale, production, design or conversion of military style assault weapons for use by civilians, including the distribution of any materials/information that may be used to assist in such conversion.
- Ensure that all business clients, including gun show operators or gun dealers, conduct background checks for every sale or transfer of guns or ammunition.
- Make a commitment to develop, share and implement technology-enhanced safety measures for guns and ammunition.
- Support and promote the creation of a federal gun trafficking statute to ensure strict punishment for individuals engaging in the trade of selling firearms to anyone prohibited from possessing them under federal law.
- Support and promote sharing of background check and gun sale data for law enforcement purposes.
- Support and promote gun safety education at the point of sale and in the communities in which we conduct business operations.

We will be transparent in our implementation of these principles and provide information which demonstrates publicly our commitment to them.

*The Sandy Hook Principles are modeled after the Global Sullivan Principles – a human rights and equal opportunity code of conduct for companies which was originally developed by the legendary Reverend Dr. Leon H. Sullivan of Philadelphia's Opportunities Industrialization Centers (OIC) of America, in order to promote desegregation and equal rights during the apartheid regime in South Africa.*



City of  
Santa Rosa

VIP-JONATHAN T.

2013 FEB 12 PM 3:54

January 29, 2013

The Honorable Diane Feinstein  
U.S. Senate  
One Post Street, Suite 2450  
San Francisco, CA 94104

SAN FRANCISCO OFFICE

FEB 03 2013

ACTION: \_\_\_\_\_

Subject: SUPPORT – Assault Weapons Regulatory Act of 2013

Dear Senator Feinstein:

We have shared in the sorrow of yet another senseless mass shooting tragedy in our great Nation, this time of elementary school children and their teachers in Newtown, Connecticut. We have witnessed too many of these tragedies and wish to see more meaningful steps taken to prevent and reduce this type of gun violence.

SCOTT P. BARTLEY  
Mayor

ERIN CARLSTROM  
Vice Mayor

JULIE COMBS  
ERNESTO OLIVARES  
JAKE OURS  
GARY WYSOCKY

We have learned that you have introduced a bill in the U.S. Senate, the Assault Weapons Regulatory Act of 2013, that is intended to focus attention on some important and meaningful steps to take actions to reduce the violence resulting from the sale, transfer, importation, and manufacture of assault weapons.

On behalf of the Santa Rosa City Council, we wish to provide our support for the principles outlined in your bill that would address some of the following concerns:

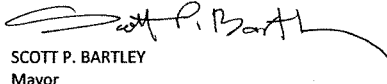
- Ban the sale, transfer, importation, or manufacturing of certain semiautomatic rifles and handguns with high volume ammunition magazines;
- Strengthen the 1994 Assault Weapons Ban and various State bans by closing loopholes in existing laws;
- Protect legitimate hunters and the rights of existing gun owners with certain provisions for grandfathering legal weapons and exempting specific hunting/sporting weapons and antique weapons;
- Require certain weapons be registered under the National Firearms Act that provides for important background check and certification requirements;
- Establish voluntary buy-back programs for specific assault type weapons and ammunition;
- Impose safe storage requirements for these weapons and ammunition; and
- Require certain assault weapons and ammunition manufactured after this bill to be engraved with identification and date of manufacture to improve enforcement.

CITY COUNCIL

100 Santa Rosa Avenue, Room 10 • Santa Rosa, CA 95404  
Phone: (707) 543-3010 • Fax: (707) 543-3030

As your bill will impact local law enforcement, I encourage you to identify and provide resources to assist local law enforcement in further supporting your bill. We appreciate greatly your leadership to address this important issue and wish to lend our support to your bill to help reduce similar tragedies in the future.

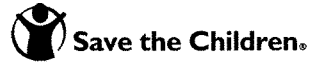
Sincerely,

A handwritten signature in black ink, appearing to read "Scott P. Bartley", with a long horizontal flourish extending to the right.

SCOTT P. BARTLEY  
Mayor

SPB/sks

c: United States Senator Barbara Boxer  
United States Representative, Mike Thompson  
Santa Rosa City Council



February 8, 2013

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

On behalf of Save the Children, the leading independent organization dedicated to creating real and lasting change in the lives of children in need in the United States and around the world, we are pleased to endorse S. 150, the *Assault Weapons Ban of 2013*.

For nearly 100 years, Save the Children has worked to ensure the safety and well-being of children around the world. But the challenges for this generation of America's children are unlike any we've seen before.

After the tragic loss of 20 young children in Newtown, CT, we can no longer stand by and allow senseless violence to be a part of the American childhood experience. As a nation, we are responsible for doing whatever is necessary to protect our children from what has clearly become a public epidemic. We need a national conversation, as well as strong leadership in Washington, DC, to address this issue and promote common sense solutions. In addition to finding new solutions, we must also support previous laws that provided basic protections for the public from gun violence.

That is why Save the Children is proud to endorse this legislation that reinstates the ban on assault weapons, as well as limits the sale of high capacity magazine clips.

We applaud your leadership and thank you for all you have done to create lasting positive change in the lives of children.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark K. Shriver".

Mark K. Shriver  
Senior Vice President  
U.S. Programs

**Society for Advancement of Violence and Injury Research**  
611 Pennsylvania Avenue, SE Box 2100, Washington, DC 20003... Tel: (202) 955-3116

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February 13, 2013

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*Georgia Regents University*

*Frederick P. Rivara, President Elect*  
*University of Washington*

*Andrea Gielen, Past President*  
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The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, DC 20510

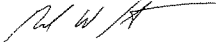
Dear Senator Feinstein:

On behalf of the members of the Society for Advancement of Violence and Injury Research (SAVIR), we are writing to express our support for S.150, the "Assault Weapons Ban of 2013." We pledge our support for the legislation and look forward to being able to assess the impact and effectiveness of banning these military style assault weapons and large capacity magazines as the legislation becomes law and is implemented. Gun violence is one of the leading causes of preventable injury death in our country, and a comprehensive public health approach has the greatest promise for assuring the safety for our nation's children and ending this ongoing epidemic of gun violence.

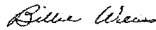
SAVIR represents scientists working in our nation's schools of medicine and public health to develop better ways of preventing injuries and reducing the toll of the most common cause of death and acquired disability across much of the human lifespan. Over the last 20 years, the number of people dying in motor vehicle crashes has decreased by 31%; deaths from fires and from drowning have been reduced even more, 38% and 52% respectively. Much of these reductions have derived from translating research findings into effective intervention efforts. In contrast, from 1985 to 2010 the total number of gun deaths has gone up and down but ultimately finished right where it started at about 31,500 per year. The reason: lack of research and innovation in addressing this problem. We anticipate that the passage of your critically important legislation along with other sensible gun violence prevention strategies and the reinstatement and funding for scientific research will provide much needed guidance and support for the most effective policies for reducing the terrible toll of gun violence on the health and safety of all Americans.

Thank you for your ongoing commitment to protecting the public from gun violence. We look forward to working with you to assure that this common sense measure is passed and becomes law.

Sincerely,



*Richard W. Sattin, MD*  
SAVIR President



*Billie Weiss, MPH*  
SAVIR Advocacy and Policy Committee, Chair

**Violence Policy Center**

1730 Rhode Island Avenue, NW      202.822.8200 voice  
 Suite 1014      202.822.8205 fax  
 Washington, DC 20036      www.vpc.org web

**Statement of Kristen Rand, Legislative Director, Violence Policy Center****Before the Senate Judiciary Committee****“Hearing on the Assault Weapons Ban of 2013”**

February 27, 2013

The Violence Policy Center (VPC) is a national non-profit organization that conducts research, policy analysis, and advocacy to reduce gun violence in America. The VPC has particular expertise on matters involving the gun industry. We appreciate the opportunity to submit written testimony on this critically important topic. Our comments will focus on the extreme hazards associated with assault weapons and high-capacity ammunition magazines.

S. 150 introduced by Senator Feinstein would effectively regulate assault weapons and high-capacity ammunition magazines. First and foremost, the bill accurately defines “assault weapon” in a way that gun manufacturers will be unable to exploit by making minor cosmetic changes and putting the guns back on the civilian market. The bill would also deal with existing guns by requiring background checks for all future transfers and prohibiting the future transfer of existing high-capacity ammunition magazines. The most important thing is to turn off the spigot and prevent gun manufacturers from relentlessly innovating to increase the lethality of their weapons.

**Assault Weapons and High-Capacity Ammunition Magazines Are Products of a Highly Militarized Civilian Gun Industry and Pose a Direct Threat to Public Safety**

Generally, the American gun industry is in long-term decline despite occasional peaks in sales such as that which occurred in the wake of the mass shooting on December 14, 2012, in Newtown, Connecticut. Household gun ownership in America has steadily declined over the past few decades according to the General Social Survey (GSS) conducted by the National Opinion Research Center (NORC) at the University of Chicago. Household gun ownership hit its peak in 1977, when more than half (54 percent) of American households reported having any guns. By 2010, this number had dropped more than 20 percentage points to a low during this period of 32.3 percent. Personal gun ownership hit its peak in 1985, when 30.7 percent of

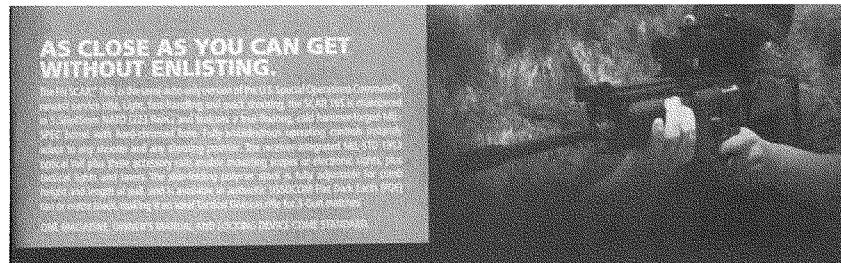


Americans reported personally owning a gun. By 2010, this number had dropped nearly 10 percentage points to a low during this period of 20.8 percent. At the same time, gun ownership has become more concentrated. According to a Harvard University survey published in 2007, an estimated 20 percent of gun owners possess 65 percent of the nation's guns.

In order to continue to sell firearms to a dwindling customer base, the gun industry is increasingly focused on manufacturing and marketing military-style firearms because, to be blunt, that is what sells. Freedom Group, a conglomerate of gun manufacturers which claims an almost 50 percent market share in the assault weapons category, summed up the current market conditions in its most recent quarterly report:

Net sales for the nine months ended September 30, 2012 were \$403.5 million, an increase of \$94.4 million, or 30.5%, as compared to the nine months ended September 30, 2011. Centerfire rifle sales increased \$67.6 million, while handgun sales increased \$15.3 million. In addition, shotgun sales increased \$11.2 million and rimfire rifle sales increased \$3.6 million. **These increases were primarily the result of strong market demand for modern sporting products**, as well as volumes associated with our handgun introductions and our new shotgun offerings. These increases were partially offset by decreased sales of other firearms and firearm products of \$3.3 million. [Emphasis added—"modern sporting products" is the gun industry's euphemism for assault weapons.]

A marketing technique central to the gun industry's militarization campaign is appealing to potential buyers who are drawn for emotional—or more sinister practical—reasons to military weaponry.



*FN Herstal USA's 2010 catalog touts the SCAR 16S, "the semi-auto only version of the U.S. Special Operations Command's newest service rifle"*

A key step in the militarization of the civilian gun industry was the switchover in the mid-1980s from revolvers to semiautomatic pistols that use high-capacity ammunition magazines. Boosted by gun companies' sophisticated marketing strategies, and an adulatory gun press, high-capacity 9mm semiautomatic pistols reinvigorated the industry in the 1980s. Known as "Wonder Nines," 9mm semiautomatic pistols drove the formerly dominant revolvers out of the

handgun market and created a lucrative boom for the industry. Military-style semiautomatic pistols proliferated. The switch from revolvers to high-capacity pistols dramatically enhanced handgun lethality. As *Jane's Infantry Weapons* observed in the early 1980s, revolvers are “bulky,” “generally limited to six rounds,” take a “long time to reload,” and produce low muzzle velocity. Pistols “can be made flat and unobtrusive,” “take up to 13 rounds or more,” feature a “simple to replace magazine,” and have high muzzle velocity. This in turn helped fuel the market for high-capacity ammunition magazines.

**FACTORY MAGS**  
**HI-CAPS**

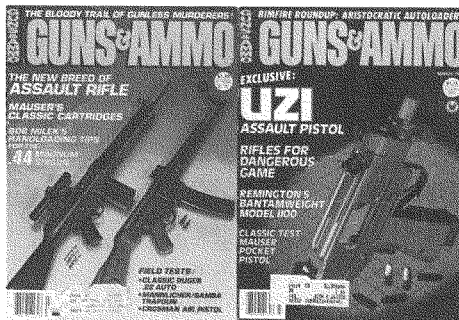
**NEWEST DESIGN**  
**NEW** 17 9MM 17RD  
 19 9MM 15RD  
**DROP** 20 10MM 15RD  
**FREE** 21 45ACP 13RD  
**ALL** 22 40s&w 15RD  
**METAL** 23 40s&w 13RD  
**LINED** 31 357Sig 15RD  
 26 12ad 32 357Sig 13RD  
 27 11ad  
 \$29<sup>99</sup> **\$19<sup>99</sup>** YOUR CHOICE  
 NET PRICE

**STANDARD CAPACITY**  
 17 9mm 10ad 23 40s&w 10ad 31 357sig 10ad  
 19 9mm 10ad 26 9mm 10ad 32 357sig 10ad  
 20 10mm 10ad 27 40s&w 9ad 36 45ACP 8ad  
 21 45ACP 10ad 29 10mm 10ad  
 22 40s&w 10ad 38 45ACP 10ad  
**\$19<sup>99</sup>** YOUR CHOICE  
 NET PRICE

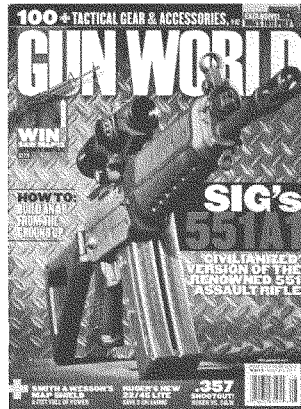
**NEW FACTORY MAGS**

A recent ad for pistol magazines from *Shotgun News*

Also in the mid-1980s, the industry found another niche market—semiautomatic assault weapons. Gun magazines in the 1980s began to relentlessly promote these new product lines, often citing the military pedigree of these “assault” weapons.



This trend continues to this day in some publications, as seen from the August 2012 issue of *Gun World*:



#### **What Is a Semiautomatic Assault Weapon?**

Semiautomatic assault weapons are civilian versions of automatic military assault rifles (like the AK-47 and the M-16) and automatic military assault pistols (like the UZI). These guns look the same because they are virtually identical, save for one feature: military assault rifles are machine guns. A machine gun fires continuously as long as its trigger is held back—until it runs out of ammunition. Civilian assault rifles are *semi*-automatic weapons. The trigger of a semiautomatic weapon must be pulled back separately for each round fired. Because federal law has banned the sale of new machine guns to civilians since 1986 and heavily regulates sales to civilians of older model machine guns, there is virtually no civilian market for true military assault weapons. The gun industry introduced semiautomatic versions of military assault weapons in order to create and exploit new civilian markets for these deadly weapons.

#### **Why are Semiautomatic Assault Weapons More Lethal than Sporting Firearms?**

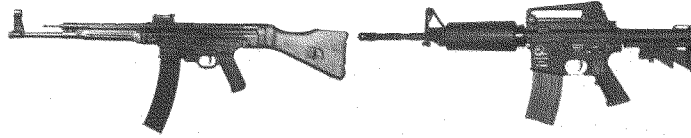
Assault weapons did not “just happen.” They were developed to meet specific combat needs and contrary to assertions from pro-gun advocates, they differ significantly from traditional sporting firearms. All assault weapons—military and civilian alike—incorporate easily identified features designed to provide a specific military combat function. That military function is laying down a high volume of fire over a wide killing zone, also known as “hosing down” an area. Civilian assault weapons maintain the specific design features that make this deadly spray-firing

so easy. These features also distinguish assault weapons from traditional sporting firearms. The distinctive “look” of assault weapons is not merely “cosmetic,” as the gun lobby often argues—the assault weapon’s appearance is the result of the design of the gun following its function. A brief summary of how assault weapons came into being makes clear the reason for, and the nature of, their distinctive design features.

The roots of military assault weapons lie in the trench fighting of the First World War. The standard infantry weapon of that conflict was the long-range battle rifle. “Infantrymen in most armies were equipped with high-powered rifles: long, unwieldy, but accurate to ranges of 1,000 m (3,280 ft.) or more. But a long weapon was a definite handicap in the close-quarter fighting of the trenches, and long-range capability was wasted when combat usually took place at ranges of tens of metres or less,” writes Chris Bishop in the 1998 book *Guns in Combat*.

Submachine guns were the intermediate step. When armies bogged down in the World War I trenches, weapons designers looked for ways to break the bloody stalemate. Among them was the submachine gun, designed to be a compact, fast-firing, short-range weapon for use in the trenches and by highly mobile storm troops in new tactical formations. According to the *Illustrated Book of Guns*, “A submachine gun (SMG) is a close-range, automatic weapon, firing pistol cartridges (e.g., 9mm Parabellum), and is compact, easy to carry, and light enough to be fired from either the shoulder or the hip.”

The final step was the first assault rifle, which came during the Second World War and grew out of the German military’s pre-war interest in “obtaining a relatively high-power intermediate or mid-range cartridge and corresponding weapon for infantry application,” according to Peter R. Senich in the 1987 book *The German Assault Rifle, 1935-1945*. According to Senich, German military thinkers realized, “Since most infantry action took place at ranges under 400 meters, the long-range potential of the standard cartridge and service rifle were actually wasted.” There were also logistical problems in supplying armies in the field with different kinds of rounds of ammunition—the larger rifle cartridges for the battle rifle and the smaller pistol cartridges for the submachine guns. According to Chuck Taylor in the 1984 book *The Fighting Rifle: A Complete Study of the Rifle in Combat*, “During their Operation Barbarossa (Russian) campaign and elsewhere, the Germans were continually reminded of the ever-increasing need for a rapid fire arm that was small enough to be convenient to hand carry, but at the same time possessed sufficient range and power to be adequate out to about 200 meters.” The result of German research and development was the STG-44 (Sturmgewehr or “storm gun”), the “father of all assault rifles....After the war it was examined and dissected by almost every major gunmaking nation and led, in one way and another, to the present-day 5.56mm assault rifles,” writes Ian Hogg in the 2000 book *Jane’s Guns Recognition Guide*.



One thing leaps out from the pictures above: the remarkable similarity of the first assault rifle (left photo) to the AR-15 (right photo) and other assault rifles currently flooding America's streets. This family resemblance is not a coincidence. From the STG-44 "storm gun" to the AR-15, assault weapons have incorporated into their design specific features that enable shooters to spray ("hose down") a large number of bullets over a broad killing zone, without having to aim at each individual target. These features not only give assault weapons a distinctive appearance, they make it easy to simply point the gun while rapidly pulling the trigger—including firing from the hip, a procedure seldom used in hunting anything but human beings. The most important of these design features are:

- **High-capacity detachable ammunition magazines** (often erroneously called "clips") that hold as many as 100 rounds of ammunition. This allows the high volume of fire critical to the "storm gun" concept.
- **A rear pistol grip** (handle), including so-called "thumb-hole stocks" and ammunition magazines that function as pistol grips.
- **A forward grip or barrel shroud** located under the barrel or the forward stock that give a shooter greater control over a weapon during recoil. Forward grips and barrel shrouds also make it possible to hold the gun with the non-trigger hand, even though the barrel gets extremely hot from firing multiple rounds.
- **A folding or telescoping stock** that allows the shooter to make the gun more portable and concealable by reducing the overall length of the gun.

These design features create the ability to quickly lay down a high volume of fire, making semiautomatic assault weapons a particularly dangerous addition to the civilian gun market. They explain why assault weapons are favored by terrorists, mass killers, and violent criminals, and they distinguish such weapons from true hunting and target guns. Deliberate, aimed fire from the shoulder may be more accurate than the "hosing down" of an area for which assault weapons were designed. But mass murderers and other violent criminals drawn to assault

weapons are not after marksmanship medals. They want to kill or maim as many people as possible in as short a time as possible—the exact job for which the semiautomatic assault weapon was designed. A gun industry observer summed up the design in September 2009 in *Shooting Wire*:

From the minute you get your first modern, AR-style rifle, the first thing that you notice is the fact that it truly is one of the most ergonomic long guns you'll ever put to your shoulder. Makes sense, it was designed to take young men, many of whom had never fired a gun of any sort before, and quickly make them capable of running the rifle—effectively—in the most extreme duress, armed combat.

Together, high-capacity ammunition magazines and semiautomatic assault weapons fuel the endless litany of mass shootings in public spaces that really began in 1984 when James Huberty told his wife that he was going “hunting humans,” and armed with a semiautomatic UZI Carbine equipped with 25-round magazines, opened fire in a San Ysidro McDonald’s killing 22 (including several children) and wounding 19 before a police SWAT team sniper killed him. Before the McDonald’s massacre such public mass shootings were virtually unheard of. But since McDonald’s, America’s history is littered with mass shootings involving semiautomatic firearms capable of accepting high-capacity ammunition magazines made infamous by the names of the places at which they occurred: Stockton’s Cleveland Elementary School; Luby’s Cafeteria; Pettit & Martin law firm; the Long Island Railroad; Washington, DC’s Metropolitan Police Headquarters; Caltrans Maintenance Yard; Connecticut State Lottery Headquarters; Jonesboro Middle School; Springfield, Oregon; Columbine High School; Wedgewood Baptist Church; Xerox; Virginia Tech; Northern Illinois University; Fort Hood; Hartford Beer Distributors; Aurora; and now, Newtown. Attached is a fact sheet that contains the casualty count, weapons, and magazines used in each of these shootings.

It is simply impossible to separate the widespread availability of high-capacity ammunition magazines (the common thread that runs through virtually every mass shooting whether used in standard semiautomatic pistols or assault weapons) and highly militarized assault weapons from these horrific mass shootings that seem to be occurring with increasing frequency.

In addition, assault weapons are a weapon of choice of cop killers. The Violence Policy Center analyzed FBI information on the makes and models of firearms used to feloniously kill law enforcement officers and found that from 1998 through 2001, one of five law enforcement officers slain in the line of duty was killed with an assault weapon. More recently:

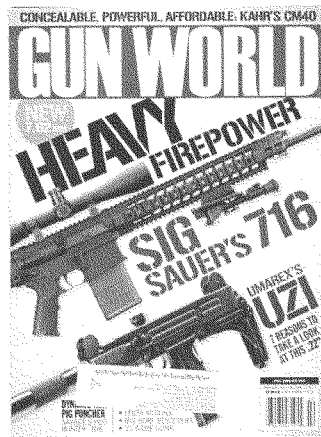
- On March 13, 2011, in Vansant, Virginia, Randy Gilbert Newberry, 52, killed Virginia Sheriff’s Deputies William Stiltner, 46, of Maxie, Virginia, and Cameron Neil Justus, 41, of Hurley, Virginia. Two other deputies were wounded in the attack. According to law enforcement sources, Newberry used a Bushmaster .223 assault rifle, the same type of assault rifle used at Newtown, equipped with a 30-round magazine. He fired approximately 50 rounds in the assault.

- On May 28, 2011, in San Antonio, Texas, Mark Anthony Gonzales, 41, allegedly killed Bexar County Sheriff's Deputy Sergeant Kenneth Gary Vann, 48, of Spring Branch, Texas. According to law enforcement sources, Gonzales used a .223 Smith & Wesson M&P15 assault rifle, the same type of assault rifle used in the July 20, 2012, movie theater shooting in Aurora, Colorado, with a 90-round "snail drum" magazine. Consistent with evidence from the crime scene, the magazine was approximately three-quarters full when found at Gonzales' home.

These weapons are marketed using military and survivalist images with slogans that at least hint at nefarious uses and boast about the firepower they offer.



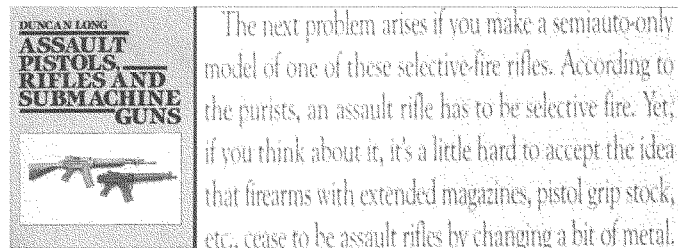
Bushmaster markets the AR-type assault rifle used in the Newtown shooting with the slogan, "Justice for All"



*Gun World* magazine touts the "heavy firepower" of a new Sig Sauer assault rifle

### Pro-Gun Advocates Make False and Misleading Claims in Opposition to Proposals to Regulate Assault Weapons

In its efforts to stop restrictions on the production and sale of semiautomatic assault rifles, assault pistols, and assault shotguns, the National Rifle Association (NRA) has worked with members of America's gun industry to deceive the American public as to the unique and lethal threat posed by these weapons. One prominent line of argument that is thoroughly addressed above is that assault weapons are no different from sporting firearms. Another common claim is that there is no such thing as a civilian assault weapon and that a "true" assault weapon is a selective-fire military weapon, capable of full-auto fire. Yet before the debate over the ready availability of assault weapons erupted in the late 1980s, gun experts acknowledged there is no significant difference between military assault weapons capable of fully automatic fire and the semiautomatic civilian versions that are subject of this hearing. In 1986, noted firearm expert Duncan Long authored *Assault Pistols, Rifles and Submachine Guns* in which he noted, "The next problem arises if you make a semiauto-only model of one of these selective-fire rifles. According to the purists, an assault rifle has to be selective fire. Yet, if you think about it, it's a little hard to accept the idea that firearms with extended magazines, pistol grip stock, etc., cease to be assault rifles by changing a bit of metal."



Furthermore, as noted earlier, gun publications frequently referred to military bred semiautomatic guns as "assault pistols" and "assault rifles." For example, in 1982, *Guns & Ammo* published a book titled *Assault Rifles*, advertising "Complete Data On The Best Semi-Automatics."

Another argument has emerged based on the false idea that all assault weapons are by definition rifles. Assault rifles, it is argued, aren't worth regulating since "not that many" people are killed by rifles of any type each year. In fact, assault weapons come in pistol, rifle, and shotgun configurations. Moreover, assault *pistols* constituted the bulk of the assault weapons problem in the 1990s. Research in 1992 for an association of police chiefs of large American cities showed that the TEC-9 assault pistol was "far and away" the leading assault



weapon seized by law enforcement agencies in such cities in 1990 and 1991, “accounting for 24% of all assault weapons seized, and 42% of all assault pistols seized.” An analysis of ATF trace data in 1988 and 1989 conducted by Cox Newspapers reported that due to its unsurpassed firepower, concealability, and low price (then about \$380), the TEC-9 assault pistol was the most favored weapon of the most dangerous criminals, particularly violence-prone drug gangs in large metropolitan areas.<sup>1</sup> In addition, the Cox report concluded, among other findings, that assault weapons were 20 times more likely to be used for criminal purposes than conventional weapons, and in certain cities, such as Los Angeles, the frequency of assault weapon use in crime was twice the national average. While assault weapons represented merely 0.5 percent of the 200 million privately owned firearms in the United States during the period of the study, they constituted 10 percent of all weapons traced to crime during that time. The Cox study was based on crime gun trace data that is unavailable for public analysis today because of restrictions imposed on release of the data by the “Tiahrt amendment.” [Cox Newspapers, *Firepower: Assault Weapons in America*, Cox Enterprises, Washington, DC, 1989]

There is currently a resurgence in the number of assault pistols available on the civilian market. The Violence Policy Center has documented this trend in a 2013 study, *Assault Pistols: The Next Wave* (<http://www.vpc.org/studies/awpistols.pdf>). The study notes that assault pistols are already popular with gun traffickers who acquire firearms in U.S. border states with the intent of smuggling them to drug trafficking organizations in Mexico. The guns are identified by make and model in federal charging documents. In one Texas case filed in 2011, *United States v. Zuniga*, among the illegally obtained guns named in the indictment were 13 assault pistols, six of which were Century International Arms Draco AK-47 assault pistols (the remainder were Kel-Tec PLR 16 assault pistols). Here is how one Texas gun store described the Draco on its website:

[T]he Draco isn't an NFA firearm [full-auto machine gun] or a restricted military weapon. This beauty happens to be a civilian legal AK 47 in pistol form. It goes by the name Draco, is manufactured in Romania and imported by Century Arms. This pistol is chambered in the popular AK rifle caliber 7.62x39, takes standard AK-47 magazines/drums and shoots like a dream. If you're interested in high capacity + firepower on a reliable, time tested platform—then this pistol is for you.

Because very limited data is available on how often particular makes and models of firearms are used in crime, it is impossible to know how many Americans have been killed by AK-47 pistols or other assault pistols. One horrific incident with an AK-47 pistol occurred in Philadelphia in 2007:

<sup>1</sup> According to San Francisco Police Inspector Earl Sanders who investigated the California 101 shooting that left nine dead and six wounded from a TEC-9 assault pistol, the “extended magazines” of the TEC-DC9, which held up to 50 rounds, “gave [the shooter, Gian Luigi Ferri] an opportunity to fire a much longer period of time [and] many more shots than he would have been capable of with . . . what might be determined to be a standard semiautomatic pistol.” These extended magazines enabled Ferri “to lay down a blanket of fire rather than fire one individual shot, recover and then fire another individual shot, with the TEC-DC9. He was able to lay down what, in essence, would be a blanket of fire which would cover a large area, thus cutting the chances of intended targets to escape.” [Declaration in *Merrill v. Navegar*, San Francisco County Super. Ct. No. 959-316 (1999)]

Police say Vincent J. Dortch was so enraged over a nest egg he believed had turned rotten in a \$1.3 million real estate investment that he plotted a lethal trap for those he felt had scammed him. Dortch, of Newark, Del., called a meeting of investors in Watson International Inc. in February 2007. When the meeting commenced around a conference table, Dortch pulled out an AK-47 assault pistol and told everyone to "say your prayers." Minutes later, three key investors lay dead, shot through the head. A fourth man who was gravely wounded managed to summon police. After trading fire with an officer, Dortch shot himself through the head, ending a brief but terrifying siege and the life of an outwardly mild man who exuded a veneer of prosperity. ["Investor rage, lethal trap," *Philadelphia Inquirer*, February 14, 2007]

Another new assault weapon trend is a new breed of assault shotgun that incorporates high-capacity detachable ammunition magazines. Some are patterned after the popular AK- and AR-type assault rifles:



Again, because of a lack of good data it is impossible to know how these new assault shotguns are being used. We do know, however, that, according to the Connecticut Department of Emergency Services & Public Protection, Newtown shooter Adam Lanza had one of the AK-type shotguns in his car the day he committed the massacre. This gun was initially erroneously reported to be the Bushmaster XM-15 assault rifle he used to kill 20 schoolchildren and six educators.

#### **Regulation of Assault Weapons and High-Capacity Ammunition Magazines Can Work to Reduce the Carnage**

Despite the well-documented limitations of the federal ban that was in place from 1994 until 2004, evidence regarding the effect of the expired federal assault weapons ban suggests that an effective ban on assault weapons and high-capacity ammunition magazines will work.

A Justice Department study of the assault weapons ban suggested that the ban was responsible for a 6.7 percent decrease in total gun murders, holding all other factors equal [Jeffrey A. Roth

& Christopher S. Koper, "Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994," The Urban Institute, March 1997] The same study also found, "Assault weapons are disproportionately involved in murders with multiple victims, multiple wounds per victim, and police officers as victims."

An analysis by David S. Fallis and James V. Grimaldi of the *Washington Post* found that the percentage of firearms seized by police in Virginia that had high-capacity ammunition magazines dropped significantly during the ban. That figure has doubled since the ban expired.

Thirty-seven percent of police departments reported seeing a noticeable increase in criminals' use of assault weapons since the ban expired according to the May 2010 Police Executive Research Forum *Guns and Crime: Breaking New Ground by Focusing on the Local Impact*.

Moreover, research supports the fact that states with assault weapons bans are less attractive source states for gun traffickers. Analyses of federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) trace data by researchers at the Johns Hopkins Center for Gun Policy and Research indicate that the border states with the highest per capita exporting of crime guns to Mexico (Arizona, New Mexico, and Texas) had export rates four times that of California. The researchers attribute this to California having much more stringent laws regarding gun sales than the other border states. California would make a relatively unattractive environment for traffickers to acquire their guns because the state banned the assault weapons that they clearly wanted, gun purchasers can more readily be held accountable for illegally transferring their guns, and California's law prohibits the bulk gun sales common in gun trafficking rings operating in Texas and Arizona. A separate study, "Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico," published in December 2012, found that "the reach of U.S. gun laws extends beyond its borders. Our analysis shows that the expiration of the U.S. FAWB [federal assault weapons ban] led to immediate violence increases within areas of Mexico located close to American states where sales of assault weapons became legal. The estimated effects are sizable, and unrelated to the idiosyncratic influence of specific border states, trends in socioeconomic conditions, legal enforcement patterns and drug-trafficking along the border."

In conclusion, many lives will be saved if an effective ban on high-capacity ammunition magazines and semiautomatic assault weapons is enacted.

The era of deadly public mass shootings with assault weapons and high-capacity magazines that began at a McDonald's in San Ysidro, California, in 1984 should end with the massacre at Sandy Hook Elementary School in Newtown, Connecticut.

TESTIMONY OF JOSHUA HORWITZ  
EXECUTIVE DIRECTOR, COALITION TO STOP GUN VIOLENCE  
SENATE JUDICIARY COMMITTEE  
“HEARING ON THE ASSAULT WEAPONS BAN OF 2013”  
FEBRUARY 27, 2013

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz, and I am the executive director of the Coalition to Stop Gun Violence (CSGV). I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of more than 47 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

As this committee considers the Assault Weapons Ban of 2013, Members should understand that assault weapons such as the AR-15 are the weapons of choice for violent insurrectionists in this country. Members should also recognize that—contrary to the assertions of the gun lobby—the taking up of arms against our government by individuals (or armed mobs) has always been considered treason.

An individual right to armed rebellion against the United States Government has never existed in our constitutional republic. Such a right would make each man a king unto himself; allowing him to make an individualized assessment that democratically-elected lawmakers have become despots and to fashion an arbitrary, violent remedy. From the drafting of our Constitution to our bloody Civil War to present day, our nation has categorically rejected such individual violence as a means to achieve political goals.

While the revolution of the American colonies established the right to self-governance, the breakdown of law and emergence of civil disorder—most notably Shays’ Rebellion—cemented the Founders’ belief in the need for a strong federal government to work in tandem with the states.<sup>1</sup> For this reason, the Framers included in the Constitution a series of clauses to address domestic insurrection. Specifically Article I, Section 8, Clause 15, which states that one of the primary purposes of the [state] Militia is to “suppress Insurrections”;<sup>2</sup> and Article IV, Section 4, which provides, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”<sup>3</sup> Furthermore, in Article III, Section 3, the Framers defined the crime of treason, stating that, “Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.”<sup>4</sup>

It is important to note that our Founders rejected the legitimacy of insurrectionism and responded

<sup>1</sup> Paul Finkelman, *A Well Regulated Militia: The Second Amendment in Historical Perspective*, 76 Chi.-Kent L. Rev. 195, note 293, at 211. (2000).

<sup>2</sup> U.S. Const. art. I, § 8, cl. 15.

<sup>3</sup> U.S. Const. art. IV, § 4.

<sup>4</sup> U.S. Const. art. III, § 3.

to it forcefully time and time again: during Shays' Rebellion; the Whiskey Rebellion of 1794; the Civil War, etc. The Second Amendment was meant to address the balance of military power between the federal and state governments, and the amendment's author, James Madison, made it clear that resistance to such tyranny would come from a Militia "officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by [state] governments possessing their affections and confidence,"<sup>5</sup> *not* by lone wolf-type domestic terrorists.

Contemporary arguments for the constitutionality of insurrectionist ideology stem largely from the 2008 Supreme Court case of *District of Columbia v. Heller*. In that ruling, however, the Court held only that the Second Amendment conferred an individual right to keep a handgun in the home for self-defense. Justice Scalia *did* muse about why the right was not limited to participation in an organized militia in *Heller*, stating, "If ... the Second Amendment right is no more than the right to keep and use weapons as a member of an organized militia—if, that is, the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee—it does not assure the existence of a 'citizens' militia' as a safeguard against tyranny."<sup>6</sup> But the Court stressed in its findings that the individual right to keep and bear arms protects only *lawful* conduct.<sup>7</sup>

Certainly, proponents of insurrectionism have stretched Justice Scalia's words well beyond their intended meaning if they take them to mean that there is an *individual* right to use political violence to avoid following democratically-enacted laws. On January 30<sup>th</sup>, Members of this committee witnessed this type of dangerous rhetoric firsthand during the following exchange between Senator Durbin and witness Wayne LaPierre, the executive vice president of the National Rifle Association (NRA):

DURBIN: Mr. LaPierre, I run into some of your members in Illinois and here's what they tell me, "Senator, you don't get the Second Amendment." Your NRA members say, "You just don't get it. It's not just about hunting. It's not just about sports. It's not just about shooting targets. It's not just about defending ourselves from criminals," as Ms. Trotter testified. "We need the firepower and the ability to protect ourselves from our government—from our government, from the police—if they knock on our doors and we need to fight back." Do you agree with that point of view?

LAPIERRE: Senator, I think without any doubt, if you look at why our founding fathers put it there, they had lived under the tyranny of King George and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny.<sup>8</sup>

<sup>5</sup> James Madison, "The Federalist No. 46: The Influence of the State and Federal Governments Compared," New York Packet, January 29, 1778. (Constitution Society: 2011). <http://www.constitution.org/fed/federa46.htm>

<sup>6</sup> *District of Columbia v. Heller*, 554 U.S. 570, 600, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

<sup>7</sup> *Id* at 620.

<sup>8</sup> Senate Judiciary Committee hearing on gun violence on Jan. 30, 2013 (Transcript), available at [http://www.washingtonpost.com/politics/senate-judiciary-committee-hearing-on-gun-violence-on-jan-30-2013-transcript/2013/01/30/1f172222-6af5-11e2-af53-7b2b2a7510a8\\_story.html](http://www.washingtonpost.com/politics/senate-judiciary-committee-hearing-on-gun-violence-on-jan-30-2013-transcript/2013/01/30/1f172222-6af5-11e2-af53-7b2b2a7510a8_story.html)

Other NRA leaders have followed Mr. LaPierre's example. For example, NRA board member Ted Nugent regularly invokes the threat of political violence. Consider these remarks in a recent interview he gave to Guns.com on January 22, 2013:

I'm part of a very great experiment in self-government where we the people determine our own pursuit of happiness and our own individual freedom and liberty not to be confused with the Barack Obama gang who believes in We the Sheeple and actually is attempting to re-implement the tyranny of King George that we escaped from in 1776. And if you want another Concord Bridge, I got some buddies.<sup>9</sup>

Recently, the pro-gun movement has been promoting the idea that our government cannot ban military-grade firearms and high-capacity ammunition magazines because this equipment is particularly useful in defending individual freedoms against government tyranny. Members of this committee will be familiar with academic David Kopel, an associate professor at Denver University and policy analyst at Cato Institute. Like Wayne LaPierre, Kopel testified before the committee on January 30<sup>th</sup>. In a prior presentation before the Second Amendment Foundation entitled "The 'Assault Weapon' Panic," Kopel affirmed that since "resistance to tyranny or invasion would be a guerrilla war... 'assault weapons' would be useful and citizen resistance might well prove successful."<sup>10</sup>

This idea is also prominent in far-right wing news sources and blog articles. The website *American Thinker* recently published a piece by Mark Almonte entitled "Why Do Civilians Need Assault Weapons?" in which he declared, "Assault weapons are necessary for defense against tyranny because they are the weapons of the common soldier ... [In order] to repel a standing army, the citizens must possess the weapon of the common soldier."<sup>11</sup> The idea of civilians needing parity in firepower with the U.S. military was reinforced in another recent editorial in *The News Star* entitled "Amendment is About Tyranny":

During [the Revolutionary] war the "assault rifle" [was] actually a musket. The most prevalent was called "Brown Bess," which fired a .75 caliber (3/4 inch) round or bullet capable of inflicting tremendous wounds. Brown Bess was perhaps, the best assault weapon of its day and was used for hunting ... The Founding Fathers approved the populace having an assault rifle to fight tyranny. Today's Brown Bess is the AR16/15.<sup>12</sup>

<sup>9</sup> Timothy Johnson, "Nugent At Gun Industry Trade Show: 'If You Want Another Concord Bridge, I've Got Some Buddies,'" *Media Matters for America*, January 22, 2013. <http://mediamatters.org/blog/2013/01/22/nugent-at-gun-industry-trade-show-if-you-want-a/192340>

<sup>10</sup> David Kopel, "The 'Assault Weapons' Panic," *Second Amendment Foundation*, June 19, 2009, [http://www.saf.org/journal/5/5\\_kopel.pdf](http://www.saf.org/journal/5/5_kopel.pdf)

<sup>11</sup> Mark Almonte, "Why Do Civilians Need Assault Weapons," *American Thinker*, February 12, 2013, [http://www.americanthinker.com/2013/02/why\\_do\\_civilians\\_need\\_assault\\_weapons.html](http://www.americanthinker.com/2013/02/why_do_civilians_need_assault_weapons.html).

<sup>12</sup> Mitchell Young, "Amendment is about Tyranny," *The News Star*, February 14, 2013 <http://www.thenewsstar.com/article/20130215/OPINION03/302150328/Amendment-about-tyranny>

Pittsburgh gun shop owner Eric Lowry echoed that sentiment this month, stating, “Citizens should be armed well enough to defend themselves against a tyrannical government in which case they should be able to own the same kind of firearms that any military soldier should be able to own.”<sup>13</sup> To reinforce this idea, Lowry’s shop gave away an AR-15, 1,000 rounds of ammunition, and 30 high-capacity ammunition magazines through a Facebook page promotion.

Gun manufacturer III Arms has gone even further in using insurrectionist rhetoric to promote the sale of AR-15s:

America is in trouble. One day soon, America will need her heroes to stand up and be counted, as did John Parker and the men who took to the Green at his shoulder in Lexington in defense of Liberty. When you are called upon to defend Liberty, when it is your turn to be John Parker and dare to stride into harm’s way, the Fighting Arms branded with our III will do their job and tell the world who you are: Patriot.<sup>14</sup>

Other insurrectionist commentators have been meticulous about the hardware required for rebellion. Roy Kubicek, the primary author of the blog *Days of our Trailers: Consider This the Old North Bridge* (and a credentialed blogger at past NRA conventions) published a series of posts entitled “The Modern Militia,” in which he asserted:

The standard US Infantry field weapon is the ubiquitous M-16/M-4 series rifle... Obviously then, since the M-16 was based off of it, the ideal firearm for Militia compatibility would be [sic] the AR-15 (or its many clones) chambered in 5.56 NATO.<sup>15</sup>

Finally, our staff received the following email from a pro-gun activist in New York on Thursday:

The 2nd amendment is not about hunting deer or ducks. I would like to make that clear. Our Governor is confused and he wants to spread the confusion. Let me be the first to clear the room of that misconception. The 2nd amendment is for hunting tyrants. For hunting rouge [sic] governments ... The second amendment guaranteed's [sic] law abiding citizens the right to keep and bear arms, the patriots of 1776 used the most advanced rifle at their disposal. the AR Musket, to defeat the British Government and their Muskets . Today Americans can no longer depend on a single shot Musket. We must have the best possible rifle to guard against tyranny by our own government or a foreign government ... I ask you which rifle if not the AR-15, will defeat tyranny today?<sup>16</sup>

Sometimes, such insurrectionist rhetoric leads to real-world violence. Since the *Heller* decision in 2008, my organization has been documenting anti-government threats and incidents of

<sup>13</sup> Nick Kratsas, “Gun Shop Responds to Gun Control Debate by Giving Away Assault Rifle,” *News Radio 1020 KDKA*, February 6, 2013, <http://pittsburgh.cbslocal.com/2013/02/06/gun-shop-responds-to-gun-control-debate-by-giving-away-assault-rifle/>

<sup>14</sup> “III Arms: About Us,” accessed February 21, 2013, <http://www.iiiarmscompany.com/about.html>

<sup>15</sup> Roy Kubicek (AKA Thirdpower), “The Modern Militia: Firearms,” *Days of our Trailers*, February 13, 2008 <http://daysofourtrailers.blogspot.com/2008/02/modern-militia-firearms.html>

<sup>16</sup> Chris Stehling, email message to csgv.org, February 21, 2013

violence through our online “Insurrectionism Timeline.”<sup>17</sup> During that time, insurrectionists armed with assault weapons have murdered law enforcement officers, engaged in conspiracies to assassinate government officials, and attempted to effect civilian’s arrests on judges and jury members, among other crimes. Just days ago, Everett Basham was arrested for threatening to kill California state Senator Leland Yee, who had introduced gun reform legislation.<sup>18</sup> Three assault weapons and homemade bombs were found in Basham’s home.<sup>19</sup>

The insurrectionist argument that assault weapons are needed to protect against “tyranny” has no place in our current debate. Taking up arms against our government is treason, and neither patriotic nor an expression of liberty. Meanwhile, Americans have a basic, inalienable right to “Life, Liberty, and the pursuit of Happiness.” They should be able to live, work, play and pray without fear of facing military-style firepower in the hands of deranged individuals. Senator Feinstein’s Assault Weapons Ban of 2013 would be a meaningful first step to ending the tragic levels of gun violence in our communities.

---

<sup>17</sup> “Insurrectionism Timeline,” Coalition to Stop Gun Violence, last modified February 16, 2013. <http://www.csgv.org/issues-and-campaigns/guns-democracy-and-freedom/insurrection-timeline>

<sup>18</sup> “More Explosives Found; Yee Confirms Death Threat,” *KGO-TV/DT*, February 14, 2013. [http://abclocal.go.com/kgo/story?section=news/local/south\\_bay&id=8993149](http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=8993149)

<sup>19</sup> “Man in Court for Threatening State Sen. Lee,” *KGO-TV/DT*, February 21, 2013. [http://abclocal.go.com/kgo/story?section=news/local/south\\_bay&id=9001276](http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=9001276)





## THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
TELEPHONE (202) 293-7330  
FAX (202) 293-2352  
TDD (202) 293-9445  
URL: [www.usmayors.org/uscm](http://www.usmayors.org/uscm)

January 28, 2013

### AN OPEN LETTER TO THE PRESIDENT OF THE UNITED STATES AND THE CONGRESS FROM THE NATION'S MAYORS

Dear Mr. President and Members of the U.S. House of Representatives and U.S. Senate:

Again and again and again, Americans are stunned by senseless acts of violence involving guns. Friday's tragedy targeting young children in Newtown is incomprehensible. Too many times this year, mayors have expressed shock at a mass shooting. Even more frequently, many of us must cope with the gun violence that occurs on the streets of our cities.

Through The U.S. Conference of Mayors we have sent our condolences to the victims, their families, and their community. We know that Newtown First Selectman Patricia Llodra and Connecticut Governor Dannel Malloy continue to do everything possible to help the families of those killed and the entire community cope with so much loss and pain.

The Conference has been calling for sensible gun laws to protect the public for more than 40 years. Mayors and police chiefs from cities of all sizes have worked together in this effort over the years.

We urge you to take immediate action: the President to exercise his powers through Executive Order and Congress to introduce and pass legislation to make reasonable changes in our gun laws and regulations. Specifically we call on you to:

- Enact legislation to ban assault weapons and other high-capacity magazines being prepared by Senator Dianne Feinstein and others;
- Strengthen the national background check system and eliminate loopholes in it; and
- Strengthen the penalties for straw purchases of guns.

We know that preventing gun violence – whether it is a mass shooting in a school or a murder on a street corner – will take much more than strengthening our gun laws. We need to reverse the culture of violence in our nation so that a violent act isn't the first response to settling a difference or compensating for a wrong. We support the idea of establishing a bi-partisan Commission that looks at the broader issues of violence in our country. We need to strengthen and more adequately fund our mental health system so that we can identify troubled individuals earlier and get them the help they need. But strengthening our gun laws should not have to wait for these other actions to occur. The time for action is now!

We believe that with this latest national tragedy and the high incidence of gun violence that continues to plague our streets, we have reached a tipping point. The nation's mayors pledge to work with you to build a safer America for our children and all of our citizens.

Sincerely,

Michael A. Nutter  
Mayor of Philadelphia  
President

Michael R. Bloomberg  
Mayor of New York City

Antonio R. Villaraigosa  
Mayor of Los Angeles  
Past President

Rahm Emanuel  
Mayor of Chicago

Kevin Johnson  
Mayor of Sacramento  
Second Vice President

Joseph P. Riley, Jr.  
Mayor of Charleston  
Past President

Thomas M. Menino  
Mayor of Boston  
Past President

Donald L. Plusquellic  
Mayor of Akron  
Past President

Gerald Jennings  
Mayor of Albany, NY

Lee Leffingwell  
Mayor of Austin, TX

Dave Golonski  
Mayor of Burbank, CA

William Euille  
Mayor of Alexandria, VA

Stephanie Rawlings-Blake  
Mayor of Baltimore, MD

Miro Weinberger  
Mayor of Burlington, VT

Ed Pawlowski  
Mayor of Allentown, PA

Denny Doyle  
Mayor of Beaverton, OR

Henrietta Davis  
Mayor of Cambridge, MA

Joshua J. Cohen  
Mayor of Annapolis, MD

Conrad Lee  
Mayor of Bellevue, WA

Evan Low  
Mayor of Campbell, CA

Wade Harper  
Mayor of Antioch, CA

John B. Callahan  
Mayor of Bethlehem, PA

Edwin Garcia  
Mayor of Camuy, PR

Arlene Mulder  
Mayor of Arlington Heights, IL

William Brien, M.D.  
Mayor of Beverly Hills, CA

Harold Weinbrecht  
Mayor of Cary, NC

Terry Bellamy  
Mayor of Asheville, NC

Matthew Ryan  
Mayor of Binghamton, NY

Kathleen DeRosa  
Mayor of Cathedral City, CA

Nancy Denson  
Mayor of Athens, GA

Joseph Sullivan  
Mayor of Braintree, MA

Mark Kleinschmidt  
Mayor of Chapel Hill, NC

Kasim Reed  
Mayor of Atlanta, GA

Bill Finch  
Mayor of Bridgeport, CT

Anthony Foxx  
Mayor of Charlotte, NC

Kevin Dumas  
Mayor of Attleboro, MA

William Moehle  
Mayor of Brighton, NY

Ron Littlefield  
Mayor of Chattanooga, TN

Pete Lewis  
Mayor of Auburn, WA

Arthur Ward  
Mayor of Bristol, CT

John A. Linder  
Mayor of Chester, PA

Deke Copenhaver  
Mayor of Augusta, GA

Linda Balzotti  
Mayor of Brockton, MA

Mary Goloff  
Mayor of Chico, CA

Michael Bissonnette Mayor of Chicopee, MA	Tim Sbranti Mayor of Dublin, CA	Andrew Hardwick Freeport, NY
Cheryl Cox Mayor of Chula Vista, CA	Roy Buol Mayor of Dubuque, IA	Bill Harrison Mayor of Fremont, CA
David Hartzell Mayor of Clarence, NY	William Bell Mayor of Durham, NC	Craig Lowe Mayor of Gainesville, FL
George N. Cretikos Mayor of Clearwater, FL	Marcia Leclerc Mayor of East Hartford, CT	Sidney Katz Mayor of Gaithersburg, MD
Edward Kelley Mayor of Cleveland Heights, OH	Sal Panto Mayor of Easton, PA	Karen Freeman-Wilson Mayor of Gary, IN
Jim Anzaldi Mayor of Clifton, NJ	Nancy Tyra-Lukens Mayor of Eden Prairie, MN	John Bridgeman Mayor of Gastonia, NC
Stephen Benjamin Mayor of Columbia, SC	Richard H. Garcia Mayor of Edinburg, TX	George Heartwell Mayor of Grand Rapids, MI
Michael Coleman Mayor of Columbus, OH	Antonia Ricigliano Mayor of Edison, NJ	Joy Cooper Mayor of Hallandale Beach, FL
Daniel Helix Mayor of Concord, CA	Dave Earling Mayor of Edmonds, WA	Rodney Craig Mayor of Hanover Park, IL
Andrew Weissman Mayor of Culver City, CA	John Cook Mayor of El Paso, TX	Pedro Segarra Mayor of Hartford, CT
Edward MacDougall Mayor of Cutler Bay, FL	Gary Davis Mayor of Elk Grove, CA	Michael Sweeney Mayor of Hayward, CA
Bill Gluba Mayor of Davenport, IA	Dick Moore Mayor of Elkhart, IN	Billy Kenoi Mayor of Hilo, HI
Judy Paul Mayor of Davie, FL	Randy Penn Mayor of Englewood, CO	Timothy McDonough Mayor of Hope, NJ
Joe Krovoza Mayor of Davis, CA	Kitty Piercy Mayor of Eugene, OR	Annie Parker Mayor of Houston, TX
John O'Reilly Mayor of Dearborn, MI	Michael Tetreau Mayor of Fairfield, CT	Ron Fisher Mayor of Huber Heights, OH
Jack Tanaka Mayor of Diamond Bar, CA	Randy McClement Mayor of Frederick, MD	Jill Swain Mayor of Huntersville, NC

Connie Boardman Mayor of Huntington Beach, CA	Carolyn Goodman Mayor of Las Vegas, NV	Matti Bower Mayor of Miami Beach, FL
Michael Alvarez Mayor of Indian Trail, NC	Richard Kaplan Mayor of Lauderhill, FL	Lori Moseley Mayor of Miramar, FL
Ava Frisinger Mayor of Issaquah, WA	Bernard Carvalho Mayor of Lihue, HI	Mary Ann Lutz Mayor of Monrovia, CA
Harvey Johnson Mayor of Jackson, MS	David Berger Mayor of Lima, OH	Steve Tate Mayor of Morgan Hill, CA
Samuel Teresi Mayor of Jamestown, NY	Patricia Krause Mayor of Lincoln Park, MI	Jill Techel Mayor of Napa, CA
Bobby Hopewell Mayor of Kalamazoo, MI	Richard Gerbounka Mayor of Linden, NJ	Robert Mezzo Mayor of Naugatuck, CT
Sylvester "Sly" James, Jr. Mayor of Kansas City, MO	Randy Watts Mayor of Logan, UT	Jonathan Mitchell Mayor of New Bedford, MA
Richard Clanton Mayor of Kentwood, MI	Bob Foster Mayor of Long Beach, CA	John DeStefano Mayor of New Haven, CT
Lucy Johnson Mayor of Kyle, TX	Chase Ritenauer Mayor of Lorain, OH	Mitch Landrieu Mayor of New Orleans, LA
Art Madrid Mayor of La Mesa, CA	Paul Soglin Mayor of Madison, WI	Noam Bramson Mayor of New Rochelle, NY
Jack Hoffman Mayor of Lake Oswego, OR	Wayne Powell Mayor of Manhattan Beach, CA	Alan Nagy Mayor of Newark, CA
J. Richard Gray Mayor of Lancaster, PA	Frank Talerico Mayor of Margate, FL	Setti Warren Mayor of Newton, MA
Virg Bernero Mayor of Lansing, MI	Jonathan Hornik Mayor of Marlboro, NJ	Paul Dyster Mayor of Niagara Falls, NY
Raul G. Salinas Mayor of Laredo, TX	Kathy Catazaro-Perry Mayor of Massillon, OH	Paul Fraim Mayor of Norfolk, VA
Patricia Gerard Mayor of Largo, FL	Alan Arakawa Mayor of Maui, HI	Keith Summey Mayor of North Charleston, SC
Ken Miyagishima Mayor of Las Cruces, NM	A C Wharton Mayor of Memphis, TN	Andre Pierre Mayor of North Miami, FL

Stephen Scaffidi Mayor of Oak Creek, WI	Michael Brennan Mayor of Portland, ME	Jan Marx Mayor of San Luis Obispo, CA
David Pope Mayor of Oak Park, IL	Charlie Hales Mayor of Portland, OR	David Lim Mayor of San Mateo, CA
Jean Quan Mayor of Oakland, CA	Angel Taveras Mayor of Providence, RI	Miguel Pulido Mayor of Santa Ana, CA
Anne E. Sallee Mayor of Oakland Park, FL	Nancy, McFarlane Mayor of Raleigh, NC	Helene Schneider Mayor of Santa Barbara, CA
Owen Henry Mayor of Old Bridge, NJ	Vaughn Spencer Mayor of Reading, PA	David Coss Mayor of Santa Fe, NM
Stephen Buxbaum Mayor of Olympia, WA	Denis Law Mayor of Renton, WA	Pam O'Connor Mayor of Santa Monica, CA
Satish Hiremath Mayor of Oro Valley, AZ	Daniel Rizzo Mayor of Revere, MA	Gary McCarthy Mayor of Schenectady, NY
William Capote Mayor of Palm Bay, FL	Sally Hutton Mayor of Richmond, IN	Michael McGinn Mayor of Seattle, WA
Bill Bogaard Mayor of Pasadena, CA	Ardell Brede Mayor of Rochester, MN	Barbara Wallace Mayor of Sewell, NJ
Shawn Connors Mayor of Pecatonica, IL	Phyllis Marcuccio Mayor of Rockville, MD	Keith McGlashan Mayor of Shoreline, WA
Frank Ortis Mayor of Pembroke Pines, FL	Jim Ellison Mayor of Royal Oak, MI	Joseph Curtatone Mayor of Somerville, MA
Sandra Bradbury Mayor of Pinellas Park, FL	Christopher B. Coleman Mayor of Saint Paul, MN	Frank Gambatese Mayor of South Brunswick, NJ
Brian Wahler Mayor of Piscataway, NJ	Ralph Becker Mayor of Salt Lake City, UT	Brenda Lawrence Mayor of Southfield, MI
Nancy Parent Mayor of Pittsburg, CA	Thomas Odell Mayor of Sammamish, WA	Noramie Jasmin Mayor of Spring Valley, NY
Luke Ravenstahl Mayor of Pittsburgh, PA	Edwin Lee Mayor of San Francisco, CA	Christine Lundberg Mayor of Springfield, OR
Michael Collins Mayor of Plainfield, IL	Mark Bartel Mayor of San Jacinto, CA	Francis Slay Mayor of St. Louis, MO

Ann Johnston  
Mayor of Stockton, CA

Joe McElveen  
Mayor of Sumter, SC

Anthony Spitaleri  
Mayor of Sunnyvale, CA

Sharon Wolcott  
Mayor of Surprise, AZ

John Marks  
Mayor of Tallahassee, FL

Beth Talabisco  
Mayor of Tamarac, FL

Bob Buckhorn  
Mayor of Tampa, FL

Jeffrey Lamarand  
Mayor of Taylor, MI

Mohammed Hameeduddin  
Mayor of Teaneck, NJ

Patrick Dunlavy  
Mayor of Tooele, UT

Joyce Cameron  
Mayor of Trotwood, OH

Jonathan Rothschild  
Mayor of Tucson, AZ

Carol Vernaci  
Mayor of Union City, CA

Shelley Welsch  
Mayor of University City, MO

Laurel Prussing  
Mayor of Urbana, IL

Vincent Gray  
Mayor of Washington, DC

Jeffrey Prang  
Mayor of West Hollywood, CA

Jeri Muoio  
Mayor of West Palm Beach, FL

Christopher Cabaldon  
Mayor of West Sacramento, CA

Kathy Cocuzzi  
Mayor of Westerville, OH

Thomas Leighton  
Mayor of Wilkes-Barre, PA

James Baker  
Mayor of Wilmington, DE

Barry Wright  
Mayor of Winslow Township, NJ

C. Kim Bracey  
Mayor of York, PA

**county of ventura**

COUNTY EXECUTIVE OFFICE  
Thomas P. Walters  
Washington Representative

January 10, 2013

The Honorable Dianne Feinstein  
United States Senate  
SH-331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:

On January 8, 2013, the Ventura County Board of Supervisors approved the enclosed resolution, calling for enactment of a federal ban on assault weapons and high capacity ammunition magazines in excess of ten rounds.

The Board greatly appreciates your longstanding leadership on this issue. Over the past several years, there has been an increase in acts of violence using semi-automatic weapons with high capacity magazines to slaughter multiple victims, often with velocity and at random. During this same time period, the overall crime rate has dropped throughout the United States. The availability of semi-automatic weapons with ammunition clips as large as thirty bullets allows a single perpetrator to kill multiple people in a short period of time. These weapons also pose a grave danger to law enforcement officers. Furthermore, these tragedies including those at Newtown, Connecticut and Aurora, Colorado this past year, have put a spotlight on inadequacies of our mental health system, and the need to strengthen that system to ensure the availability of adequate mental health resources available in the nation.

While California leads the nation in gun control, surrounding states have some of the least restrictive gun laws, and the Board recognizes that Federal regulations offer the best nationwide protection to the public. Please work with President Obama, Vice President Biden, and your colleagues in Congress to enact legislation banning assault weapons and high capacity ammunition magazines in excess of ten rounds.

I thank you for your consideration.

Sincerely yours,



Thomas P. Walters  
Washington Representative

TPW:jaw

Enclosure

**A RESOLUTION OF THE VENTURA COUNTY BOARD OF SUPERVISORS**

Resolution No. \_\_\_\_\_

**SUPERVISORS CALLING FOR A FEDERAL ASSAULT WEAPONS BAN AND  
A BAN ON AMMUNITION MAGAZINES IN EXCESS OF TEN ROUNDS**

**WHEREAS**, in 1994, Congress enacted an assault weapons ban that prohibited the sale of certain semi-automatic and automatic weapons in order to reduce the levels of street violence in the United States; and

**WHEREAS**, in 2004, the assault weapons ban expired by operation of law and, to this date, the assault weapons ban has not been renewed by Congress and assault weapons and large capacity ammunition magazines are allowed to be sold by many states, and Senator Dianne Feinstein has recently proposed reenactment in the 113<sup>th</sup> Congress; and

**WHEREAS**, since 1999, the incidents of mass shootings in schools and public places have increased at the same time that the overall national crime rate has been falling; and

**WHEREAS**, in the last several years, the amount of mass gun violence involving high capacity weapons has accelerated and communities such as Tucson, Arizona; Aurora, Colorado; Newtown, Connecticut; Clackamas, Oregon; and Virginia Tech have become synonymous with large-scale loss of life and crippling injuries; and

**WHEREAS**, the use of semi-automatic with large ammunition capacity allows persons intent on mass murder to cause far more deaths than would be possible if such weapons were not available; and

**WHEREAS**, assault weapons and large capacity ammunition magazines are not necessary for sportsmen nor home protection and constitute a demonstrated threat to the general public and law enforcement personnel.

**NOW, THEREFORE BE IT RESOLVED**, that the Ventura County Board of Supervisors calls for enactment of federal legislation banning assault weapons and ammunition magazines larger than ten rounds capacity, including, but not limited to, the weapons ban legislation proposed for adoption by Senator Dianne Feinstein.

Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and duly carried, the foregoing resolution was adopted on January 8, 2013.

\_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST: MICHAEL B. POWERS  
Clerk of the Board of Supervisors,  
County of Ventura, State of California

By \_\_\_\_\_  
Deputy Clerk of the Board





ANTONIO R. VILLARAIGOSA  
MAYOR

January 22, 2013

Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510-0504

Dear Senator Feinstein:

On behalf of the City of Los Angeles, I am writing to express my strong support of your Assault Weapon's Regulatory Act of 2013. As speaker of the California Assembly, I was joint author of the state's assault weapons ban which has been a useful tool for removing assault weapons from the streets of Los Angeles. However, without a federal ban, individuals easily purchase assault weapons in neighboring states and bring them to California. A federal ban would prevent such activities and contribute to our ability to continue to reduce crime in Los Angeles.

Additionally, I support your effort to ban high capacity and detachable magazines. Preventing criminals from rapidly re-loading weapons, particularly with high-capacity magazines, may not stop but can certainly disrupt mass tragedies such as those that occurred at Sandy Hook Elementary School and in Aurora, Colorado, and perhaps render them less lethal.

The City of Los Angeles and the State of California have some of the toughest gun safety laws in the nation. The growing culture of violence in this nation must be countered with a multipronged approach that provides law enforcement and other government officials with an array of tools to reduce the bloodshed of children and others in our country.

Thank you for sponsoring this important piece of legislation.

Very truly yours,

ANTONIO R. VILLARAIGOSA  
Mayor

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012

PHONE: (213) 978-0600 • FAX: (213) 978-0750





## WASHINGTON OFFICE ON LATIN AMERICA

*Celebrating 30 years of promoting democracy, human rights and social justice in Latin America.*

April 16, 2013

Senator Dianne Feinstein  
331 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Feinstein,

The Washington Office on Latin America is a DC-based human rights organization that focuses on the relationship between public policies and human rights. In particular, we advocate for U.S. government policies that will have a positive effect on human rights in Latin America.

Since 2006, drug-related violence in Mexico has risen dramatically. Estimates vary widely, but as many as 60,000 people have been killed. Thousands have been disappeared; reports of torture and arbitrary detention have become increasingly common. Recognizing that safety and freedom from violence are human rights, WOLA has advocated for comprehensive solutions to violence in Mexico, including judicial reform, police reform, and increased funding for civil society.

The causes of violence in Mexico are complex, but the availability of inexpensive and deadly firearms along the U.S. border plays an important role. 70 percent of firearms recovered in Mexico and submitted for tracing come from the United States; the same military-style assault weapons that have been used in massacres here in the United States are being bought in this country and illegally trafficked across the border into the hands of criminal organizations. Gun violence is a shared problem, and it demands shared solutions.

We believe that a strengthened and renewed Assault Weapons Ban is part of the solution to both violence in Mexico and Violence in the United States. Several studies have credit the Assault Weapons Ban with helping to reduce violence in the United States between 1994 and 2004, and two recent academic papers have linked the expiration of the original Assault Weapons Ban in 2004 to a subsequent rise in violence in Mexico. There is no "magic bullet" to the problem of violence, whether in Mexico or the United States, but this legislation is a step in the right direction.

For these reasons, the Washington Office on Latin America wholeheartedly endorses the 2013 Assault Weapons Ban.

Sincerely,

Joy Olson  
Executive Director

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0020

**Firearms Transaction Record Part I -  
Over-the-Counter**

**WARNING:** You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction  
Serial Number (If any)

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

**Section A - Must Be Completed Personally By Transferee (Buyer)**

1. Transferee's Full Name		Last Name		First Name	Middle Name (If no middle name, state "NMN")
2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)					
Number and Street Address		City	County	State	ZIP Code
3. Place of Birth		4. Height	5. Weight	6. Gender	7. Birth Date
U.S. City and State	-OR- Foreign Country	Ft. _____ In. _____	(Lbs.) _____	<input type="checkbox"/> Male <input type="checkbox"/> Female	Month _____ Day _____ Year _____
8. Social Security Number (Optional, but will help prevent misidentification)			9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)		
10.a. Ethnicity		10.b. Race (Check one or more boxes.)			
<input type="checkbox"/> Hispanic or Latino		<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> White			
<input type="checkbox"/> Not Hispanic or Latino		<input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander			
11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.					
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
d. Are you a fugitive from justice?					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
g. Have you been discharged from the Armed Forces under dishonorable conditions?					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
j. Have you ever renounced your United States citizenship?					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
k. Are you an alien illegally in the United States?					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.					<div>Yes <input type="checkbox"/></div> <div>No <input type="checkbox"/></div>
13. What is your State of residence (if any)? (See Instructions for Question 13.)		14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____		15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?	

Note: Previous Editions Are Obsolete  
Page 1 of 6

Transferee (Buyer) Continue to Next Page  
STAPLE IF PAGES BECOME SEPARATED

ATF Form 4473 (5300.9) Part I  
Revised April 2012

## Statement to Senate Judiciary Committee on Gun Control

By J. Kenneth Blackwell, former Mayor of Cincinnati and Ohio Secretary of State

January 26, 2013

The Second Amendment is a fundamental right, enshrined in that sacred list of liberties in our Constitution that we call the Bill of Rights. It is set right alongside the freedom of speech, the freedom of religious faith, the right that no person can ever make you a slave, the right that no state can deprive us of our rights or equal protection of the law, and the right to vote. It is a right of self-defense.

In 1791 that right was adopted as the Second Amendment, as a right of the people to band together to collectively defend oneself against public violence, meaning government tyranny. In 1868 that right was extended through the Fourteenth Amendment to also defend against government oppression by state or local governments. And from 1791, through 1868, to 2013, it was and is also the right to defend oneself against private violence, the violence perpetrated by criminals.

Yes, the Framers of the Constitution wanted people to be able to hunt. And that is an essential part of our cultural fabric as a people. It is a rich part of our heritage, part of self-reliance, a way of passing down our values, and it also provides precious time to spend time together for fathers and sons, and increasingly mothers and daughters, too. The right to bear arms is also for competition—for sporting, and it is also for collectors.

But as the Supreme Court recognized just five years ago, it was for the right of self-defense against some future government that would refuse to stand for reelection and would hold onto power by military might, and against lawless and heartless folks who would victimize others, that those who founded our nation made this right part of the Supreme Law of the Land, forever trumping every president, Congress, and court that would ever hold office in the United States. This right to protect one's life and liberty is a God-given right. It is a gift from God, not a grant from government.

The government does not give us this right, just as the Declaration of Independence makes clear government does not give us any of our inalienable rights. Instead it is the role of government to recognize the rights God has given to each of us, to respect those rights, and to secure those rights. That's what the Second Amendment does, and it is an essential right for every American citizen who is law-abiding and peaceable, regardless of skin color, geography, education, or socioeconomic status.

It is easy to understand how the Second Amendment relates to the culture of a Norman Rockwell painting of a rural father with his son walking through the woods with shotguns or rifles, hunting ducks or deer. But as important as that cultural heritage is, the core rights protected by the Second Amendment—to protect oneself against public and private violence—is just as real for Americans of all races and ethnic groups.

We thank God that we no longer are in days where we have to fear government violence, where the Second Amendment right to resist a tyrannical government would be the right of a black man in the Deep South in 1870 having to protect himself against a local lynch-mob posse regarding which the local

sheriff would look the other way—or worse yet—would sometimes be led by a local sheriff's deputy. But the right against private violence is even more important for so many black Americans today.

A black man or woman in his or her twenties should be safe and secure in their apartment or going to work. A black father has a right to protect his family and his home. Or too often—and this is sad because it is harming too many black children—it is a single mother. She has every right to demand that she be able to protect herself and her family. The only clear equalizer between a striving young mother, or grandmother, and a full-grown man breaking into her home is a firearm that she knows how to responsibly store and use.

I submit this testimony today to urge the protection of our Second Amendment rights.

Sincerely,

Kenneth Blackwell

Board Chairman, Center for Urban Renewal and Education; Board member, NRA

## The Fallacy of Gun Free School Zones

by Officer Rob Young

January 17<sup>th</sup>, 1989. Cleveland Elementary School. Stockton, CA. A day that forever changed my life and the lives of many others. That morning, as a 7 year old boy, I lost part of my innocence. I learned the cold, harsh reality that your life can be taken within a moment's notice.

I remember waking up to get ready for school that morning. It was cold and foggy. Unlike most kids, I looked forward to going to school. I looked forward to playing with my friend at recess. I looked forward to one of the best games a first grader could play at that age. Kickball!!! This day was no different.

The time came for morning recess, and I was ready! We started our game on the painted kickball diamond that laid across our blacktop. I remember being so excited. In a matter of seconds our fun came to an abrupt end when my classmates and I noticed a burning car parked a few dozen yards from where we were playing our game.



**Rob Young, recovering from wounds inflicted by a school-yard gunman in 1989**

The flames drew many of the kids like a porch light attracts moths. Children often run towards things that look exciting, not realizing the danger that something like a car fire poses.

I didn't run towards the car, like many of the others. I didn't have a chance. The driver of that car, the coward who set the fire, began to open fire on my classmates and me. Patrick Purdy was able to walk onto our campus with a Chinese version of the AK-47.

What was supposed to be a fun game of kickball, turned to sheer panic. I did what I thought I was supposed to do, and ran towards my classroom. I still did not comprehend the evil that was taking place as I tried to get back to a place of safety.

I remember what it sounded like, as the bullets flew past my body. I remember the feeling of my feet literally being swept out from under me as a round traveled through my right foot. I

remember the slap of the round that hit the pavement an inch or so in front of me, prior to lodging itself in the left side of my chest.

I remember the difficulty of standing to my feet, and making it to the wooden handball wall that stood in the middle of our blacktop. I still remember the wood exploding above my head as more rounds pierced the wall, inches from my face. I'll never forget the cold-eeerie silence after making it back to my classroom, hearing the last gunshot, a self-inflicted shot to the head which ended Patrick Purdy's life.

The realization of what just occurred set in, and that was when I lost it. I've never felt so afraid in my life. The cops could not get there fast enough. It felt like hours before the first officers arrived, and we knew that we were finally safe. No child should ever feel what I felt that day. No one should ever feel the pure terror of what took place that January morning. Five kids were killed, 27 were injured, and an entire nation lost the sense of security of being able to send their children to school and having them be safe.

You may be hearing my story, and thinking to yourself that "more gun-control" is what needs to happen. You are not alone in that belief. It seems like that is all we hear after incidents like these. But let me be the one to tell you. Gun control is NOT the answer. Gun control would not of saved me or any of my classmates that dreadful day.

What happened to us on that schoolyard is horrific, we can all agree on that. However, what the psychopath wanted that day, the need to hurt and kill, could and probably would have happened whether he was armed or not. A firearm is just the avenue that he chose to go down.

If you look at past incidents -- such as the Oklahoma City Bombing, the attacks of Ted Kaczynski, etc. -- the results were horrific. When you take tragedies such as these, the common denominator is never the weapons used. We miss the mark when we, the outsiders, begin to dissect the incident in question. In all of these attacks, the common denominator is the attacker, not the weapon.

Going through what I went through as a kid, most would think that I would blame the weapon. I guess I differ than some of you. I HAVE NEVER BLAMED THE FIREARM! I guess I got it, even as a youngster. My attacker was the only person to blame. He chose to do what he did that day, and he would of merely chosen another way to do it if he was not armed. The possibilities are endless.

Let me ask you a question: Is it the vehicle's fault when a drunk gets behind the wheel and takes out an innocent person? Should we now place a ban on vehicles? That would be nonsense! So why call for more gun control? I will tell you now that this is not the answer. There is nothing good that will come of it. To strip Americans of a fundamental right to bear arms, or even the types of weapons we choose is absurd. The only people who will be affected are the many law abiding citizens who choose to protect themselves against evildoers.

In early 2004, I raised my right hand and swore an oath to uphold and enforce the laws of the Great State of California, and the rights stated in the United States Constitution. I take my responsibility seriously, and I have always served with pride.

In the nine years of active law enforcement I have made several arrests of people who stray from the law and choose to unlawfully carry a firearm. Many of the suspects that we deal with on the street are already convicted felons, and are prohibited by law to possess firearms. I can tell you from years of experience, that these folks do not care about the laws that prohibit them from carrying. Most will not think twice before using those weapons to victimize people like you, especially if they know that you are unarmed and unable to defend yourself. And by us passing more gun restrictions, the bad guys WILL know for sure.

What makes you think that a single gun ban would change this? Why not make it easier for our law-abiding citizens to obtain a carry permit if they choose? Make it easier for them to legally possess a firearm on their person or in their homes, which would give them the ability to adequately protect themselves. We as a nation, have instead taken several steps backwards, and have made it absolutely harder to arm ourselves accordingly.

In most of the country, law-abiding citizens are able to carry firearms concealed. In Vermont, citizens can even carry without getting permission and, not surprisingly, Vermont has often been dubbed the Safest State in the nation. But in some states, officials make it very difficult for good people to obtain a permit to carry firearms. They also limit magazines capacities, require "bullet buttons" and have state-approved rosters which restrict the types of weapons we can legally own. I challenge you to give me the name of one crook who would take them time to "check the list" prior to using the gun of their choice while committing an act of violence.

I can also tell you from my training and experience, that we as police officers cannot provide the services that we should be able to. Most departments are understaffed and/or operate at



minimum staffing levels because of budget cuts, and poor money management at the municipal level. This has created a “reactive police force” rather than a “proactive police force.”

Does that mean that we are not proactive as police officers? Of course not. We do what we can and act when we need to. However, we cannot be everywhere at once. Although we do what we can to get to an emergency as quickly as possible, it is very likely the officers will arrive *after* the incident has taken place. God forbid you are ever faced with needing a weapon to defend yourself or a loved one. You will be wishing that you had the means to not only defend yourself, but to defend yourself properly against a person who will be better armed than you.

I have never met Nick Meli of Portland Oregon. However, I am sure he was glad to be armed on December 11, 2012. Nick, who was walking through the Clackamas Town Center mall with a friend, was able to draw his pistol and protect himself against a heavily-armed suspect who had just killed two other people in the mall. Mr. Meli was not a police officer, however, he had a CCW. He was able to take cover, draw his pistol, and point it at the gunman. When the gunman noticed Nick, he chose to end his own life rather than carry on his killing spree. It is my belief that Nick saved many others that day because he was afforded the right to carry.

In ending, I ask of you to not act out of fear. Do not have a “knee jerk” reaction in this. Do not take my right as a husband and as a father to protect my family against sick individuals who choose to cause us harm. Do not place unfair limits on my ability to protect myself and my loved ones, and make us play on an uneven playing field. Do not take away my Second Amendment right that our forefathers set forth in the Constitution. A man or woman should have the right to protect themselves and their families. Our forefathers knew this then, and I know this now.

Thank you for your time.

***Officer Rob Young is employed in the state of California. His testimony is provided courtesy of Gun Owners of America, 8001 Forbes Place, Suite 102, Springfield, VA, [www.gunowners.org](http://www.gunowners.org).***

Geoffrey R. Stone

Edward H. Levi Distinguished Service Professor of Law, University of Chicago

## The Second Amendment

Posted: 01/30/2013 10:35 am EST Updated: 04/01/2013 5:12 am EDT

*The following statement, which UCLA law professor Adam Winkler and I crafted, was signed by more than fifty of the nation's most distinguished constitutional law professors. The statement refutes unfounded claims that the Second Amendment precludes Congress from enacting legislation to reduce gun violence in the United States. Although these scholars hold widely divergent views on constitutional interpretation, and often fiercely disagree on a broad range of constitutional issues, they all agree on this question. The statement was submitted today to Congress in anticipation of the beginning of hearings on the proposed legislation.*

### **Statement of Professors of Constitutional Law: The Second Amendment and the Constitutionality of the Proposed Gun Violence Prevention Legislation**

Several proposed reforms to the nation's gun laws, including universal background checks and restrictions on high-capacity ammunition magazines and assault weapons, are now pending before Congress. Concerns have been raised that these measures might violate the Second Amendment. We, the undersigned professors with expertise in constitutional law, write to address those concerns.

In 2008, the U.S. Supreme Court held that the Second Amendment, which provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed," guarantees an individual's right to have a functional firearm in the home for self-defense. The Court's decision in that case, *District of Columbia v. Heller*, struck down a D.C. law that effectively barred the use of any firearm for self-defense. The law is now clear that the government may not completely disarm law-abiding, responsible citizens. The Court also made clear, however, that many gun regulations remain constitutionally permissible. "Like most rights," the Court explained, "the right secured by the Second Amendment is not unlimited." Writing for the Court, Justice Antonin Scalia explained that restrictions on "dangerous and unusual" weapons are constitutional and that "nothing in our opinion should be taken to cast doubt" on laws that prohibit "the possession of firearms by felons or the mentally ill" or laws that impose "conditions and qualifications on the commercial sale of arms."

In this sense, Justice Scalia recognized in *Heller* that, like other constitutional rights, the Second Amendment is not an absolute. The First Amendment, for example, provides that "Congress shall make no law... abridging the freedom of speech," but the Supreme Court has long and consistently held that some types of speech -- for example, defamation, obscenity and threats --

can be regulated; that some people -- for example, public employees, members of the military, students and prisoners -- are subject to greater restrictions on their speech than others; and that the government can reasonably regulate the time, place and manner of speech. As Justice Scalia explained in *Heller*, the rights guaranteed by the Second Amendment are likewise subject to appropriate regulation in order to enhance public safety.

In acknowledging the presumptive constitutionality of laws designed to prevent gun violence, including restrictions on who has access to firearms and what types of firearms they may have, *Heller* is consistent with the history of the right to keep and bear arms. The founding fathers who wrote and ratified the Second Amendment also had laws to keep guns out of the hands of people thought to be untrustworthy. Such laws were necessary to ensure that the citizen militia referenced in the Second Amendment was "well regulated." In the 1800s, many states restricted the sale or public possession of concealable firearms. In the early twentieth century, the federal government restricted access to unusually dangerous weapons, such as machine guns, and states barred people convicted of certain felonies from possessing firearms. Laws such as these were routinely upheld by the courts, which recognized the legitimacy of legislative efforts to keep the most dangerous weapons out of the hands of the most dangerous people.

While the permissibility of any particular reform depends on its details, the reforms currently being considered by Congress are clearly consistent with the Second Amendment. We express no view on the effectiveness or desirability of the policies reflected in the various proposals, but we all agree that none infringes the core right identified by the Court in *Heller*.

Universal background checks, especially those conducted instantaneously through the National Instant Background Check System, do not impose a significant burden on law-abiding citizens. Yet background checks may provide an important safeguard against easy access to guns by members of criminal street gangs, other felons and the mentally ill. As with other rights that have eligibility criteria, such as the right to vote, the right to keep and bear arms is not offended by neutral measures designed to ensure that only eligible, law-abiding citizens exercise the right. Moreover, background checks imposed at the point of sale are typical of the "conditions and qualifications on the commercial sale of arms" recognized by the Supreme Court in *Heller*.

Restrictions on the manufacture and sale of high-capacity ammunition magazines and assault weapons are also consistent with the Second Amendment. In a recent opinion authored by Judge Douglas Ginsburg and joined by Judge Karen Henderson, the U.S. Court of Appeals for the District of Columbia Circuit held that such regulations are consistent with the Second Amendment and with the Supreme Court's decision in *Heller*. The court of appeals recognized such weapons and magazines are not necessary for individual self-defense -- what *Heller* called the "core lawful purpose" of the Second Amendment. Restrictions on high-capacity magazines and assault weapons, the court of appeals held, do "not effectively disarm individuals or substantially affect their ability to defend themselves." The Second Amendment, like the First Amendment, does not prevent lawmakers from enacting reasonable regulations that do not seriously interfere with the core right guaranteed by the Constitution.

The Supreme Court has clearly held that the Second Amendment preserves the right of law-abiding citizens to have a firearm in the home for self-defense. As both the historical tradition of

the right to bear arms and the Court's decision suggest, reasonable and limited measures to enhance public safety that do not unduly burden that right are consistent with the Second Amendment.

Signed,

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Statement by Star Parker, President, Center for Urban Renewal and Education (CURE)

February 22, 2013

Good morning. My name is Star Parker and I am the founder and president of CURE, the Center for Urban Renewal and Education, a non-profit think tank that promotes market-based solutions to fight poverty.

CURE is submitting this statement today to bring attention to the importance of defending the right of all Americans, guaranteed under the 2nd Amendment of our Constitution, to bear arms.

CURE is a nationwide coalition of conservative black leaders from the world of politics and public policy in Washington, from the business community, from academia, and from the clergy, and we want to express our deep concern about efforts currently underway to limit our God-given and constitutional right of self-defense.

Although CURE is based in Washington DC, I am a resident of California, thus Senator Diane Feinstein, the author of one of the proposals to advance government control over gun ownership, is my representative.

I am submitting this statement with the hope that it will serve as a reminder to Ms. Feinstein and all other U.S. Senators that Black History is rife with government demands to strip away our constitutional rights.

CURE believes that it is our duty as African American citizens to challenge the gun control proposals currently being considered on Capitol Hill.

Number one: The call for universal background checks as qualifiers for constitutional rights invokes painful memories of Jim Crow laws and black codes.

A substantial body of research already shows that gun controls empower criminals and weaken law-abiding citizens.

Regarding black reality, blacks are the least armed, least protected and defended, and the most assaulted citizens in our country.

According to a recent Pew Research Center survey, 42 percent of whites and 16 percent of blacks say that they have a pistol or rifle at home.

Does anyone actually think that universal background checks, in which some past legal infraction might nullify a gun application, will not result in even fewer law abiding black men from obtaining a weapon to protect their family?



And what about black women?

According to research published in the British journal of Psychiatry, Dr. Pricilla Coleman, professor of Human Development and Family Studies at Bowling Green State University, Meta Analysis studies show an 81 percent higher risk for mental health problems with women who have had an abortion.

Will abortion be one of the questions on the "universal background check" application?

Number two: The call for banning specific guns as Senator Feinstein has proposed is also problematic as it puts too much power in the hands of politicians and a law enforcement establishment which cannot always be trusted.

In a Pew Research Center survey in 2009, 46 percent of whites compared to only 24 percent of blacks said they have a "great deal" of confidence in the local police to enforce the law.

Law abiding black citizens live under siege in crime ridden communities. Yet somehow they are supposed to buy the logic that giving more power to those in law enforcement already charged with maintaining order but don't, while stripping down the freedoms of those that do obey the law, will make them better off?

One question the gun-control advocates are never challenged to answer for the most vulnerable in our country when they move to promote gun control is how do you take the gun from the underground? The criminal? A racist cop or tyrannical government?

Taking arms from the law abiding many puts too much power in hands of a perhaps ill-intending few.

This Black History Month testimony is dedicated to the tradition of Black History Legend Frederick Douglass - a runaway slave and great American orator - who stated on this issue that "A man's rights rest in three boxes: the ballot box, the jury box, and the cartridge box."

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Star Parker, CURE President

[star@urbancure.org](mailto:star@urbancure.org)

CURE is a 501c3 non-profit think tank which promotes market-based solutions to fight poverty.

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**Errata Notice:** This report has been updated to correct two errors: on page 8, the date was listed incorrectly in the first sentence as November 28, 2010. The correct date is December 13, 2011. On page 14 in Appendix Table F., the date listed in parentheses was incorrectly listed as December 13, 2010. The correct date is December 13, 2011.

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant final report available electronically in addition to traditional paper copies.

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### **Enforcement of the Brady Act, 2010**

Federal and state investigations and prosecutions of  
firearm applicants denied by a NICS check in 2010

Ronald J. Frandsen

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August, 2012

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## **Enforcement of the Brady Act, 2010**

### **Abstract**

The Brady Handgun Violence Prevention Act (Brady Act) requires criminal history background checks by the Federal Bureau of Investigation (FBI) and state agencies on persons who attempt to purchase a firearm from a licensed dealer. In 2010, the FBI and state agencies denied a firearm to nearly 153,000 persons due to National Instant Criminal Background Check System (NICS) records of felonies, domestic violence offenses, and other prohibiting factors. *Enforcement of the Brady Act, 2010* reports on investigations and prosecutions of persons who were denied a firearm in 2010. The report describes how the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) screens denied-person cases and retrieves firearms that were obtained illegally. Statistics presented include charges most often filed against denied persons by United States Attorneys and results of prosecutions. Investigation statistics from two states are also presented. Key statistics are compared for the five-year period from 2006 to 2010. Statistical highlights are presented in the body of the report and complete details are included in an Appendix.

### **Disclaimer**

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## Background

**The Brady Act.** The Brady Handgun Violence Prevention Act (Brady Act) was enacted in 1993 to provide a method for blocking transfers of firearms to prohibited persons. From February 28, 1994 to November 30, 1998, the interim Brady provisions, 18 U.S.C. 922(s), required a Federal Firearms Licensee (FFL) to request a background check on a handgun applicant from the Chief Law Enforcement Officer (CLEO) of the jurisdiction where the licensee operated. A handgun could be transferred if a notice of denial was not transmitted to the FFL within five days by the CLEO.

**National Instant Criminal Background Check System.** Pursuant to the permanent provisions of the Brady Act, 18 U.S.C. 922(t), the NICS began operations on November 30, 1998. The NICS allows a licensee to contact the system by telephone or other electronic means for information, to be supplied immediately, on whether receipt of a firearm by a transferee would violate federal or state law. In addition to regulation of handgun sales, the permanent provisions mandate background checks on long gun purchasers and persons who redeem a pawned firearm. A licensee has the option of requesting a check on a person who attempts to pawn a firearm.

A NICS inquiry is not required if a transferee presents a state permit qualified by ATF as an alternative to the point-of-transfer check. Qualified permits allow a transferee to possess, acquire, or carry a firearm, and were issued not more than five years earlier by the state in which the transfer is to take place, after verification by an authorized government official that possession of a firearm by the transferee would not be a violation of law. A permit issued after November 30, 1998 qualifies as an alternative only if the information available to the state authority includes the NICS.

The NICS process begins when a licensee receives a completed Firearms Transaction Record (ATF Form 4473) and a government-issued photo identification from an applicant. Completion of a state disclosure form may also be required. Submitting false information in regard to a firearm transaction is illegal under federal law and many state statutes.

A licensee initiates a NICS check by contacting either the Federal Bureau of Investigation (FBI) or a point of contact (POC) agency designated by state government. The FBI and the POC agencies always check three major federal databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index. If the transferee is not a citizen of the United States, the NICS will query Bureau of Immigration and Customs Enforcement (ICE) records. A POC may check additional state records. A check may include contacting an agency that maintains a record that the FBI or POC cannot access directly.

After a search of available federal and state records, the checking agency responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed

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pending further review of the applicant's record. If further review of a record indicates that the transfer would not violate federal or state law, the checking agency notifies the licensee that the transfer may proceed. If the licensee does not receive a response within three business days, the transfer may proceed at the licensee's discretion. A person who is not allowed to proceed may appeal to the FBI or POC and submit information to correct the record on which the denial was based.

NICS checking agencies most often block the transfer of a firearm or a permit to a person whose records indicate a felony indictment or conviction, a fugitive warrant, unlawful drug use or addiction (within the prior year), a mental defective adjudication or an involuntary commitment to a mental institution, illegal or non-immigrant alien status, a domestic violence restraining order, or a misdemeanor domestic violence conviction. These and other prohibitors are stated in the Gun Control Act (GCA), 18 U.S.C. 922. A NICS denial may also be based on a state law prohibition.

**NICS Denials in 2010.** The FBI conducted over six million NICS transfer checks in 2010 and denied over 72,000 applications, a denial rate of about 1%. The most common reason for denial by the FBI was a record of a felony indictment or conviction (over 47%), followed by fugitives from justice (19%), and state law prohibitions (about 11%) (Table 1). Other reasons included drug use or addiction (about 10%), domestic violence misdemeanor convictions (over 6%), and domestic violence restraining orders (over 4%) (Appendix table A).

**Table 1. Background checks by the FBI in 2010**

	Number	Percent
Applications for firearm transfer	6,037,394	
Denials / denial rate	72,659	1.2%
Most common denial reasons / percent of denials		
Felony indictment or conviction	34,459	47.4%
Fugitive	13,862	19.1%
State law prohibition	7,666	10.6%

### ATF Investigations

Denial data is electronically transmitted by the FBI on a daily basis to ATF's Denial Enforcement and NICS Intelligence (DENI) Branch (formerly Brady Operations Branch). Transactions denied by the FBI contain data on prohibited persons who unlawfully attempted to purchase a firearm. Some prohibited persons obtain a firearm during a "delayed transaction," where the FBI has not completed a check in three business days and the dealer is allowed to transfer the firearm. When the FBI finds a prohibitory record and is informed by the dealer that a transfer occurred, a "delayed denial" referral is made to ATF.

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As a way to assist ATF investigations, the FBI NICS Section implemented a system enhancement that ranks a delayed denial transaction based on ATF categories applicable to the specific denial and separates the ranked delayed denials from the standard denials. (*NICS Operations 2005*, FBI CJIS Division, January 2006, [http://www.fbi.gov/about-us/cjis/nics/reports/2005-operations-report/ops\\_report\\_2005.pdf](http://www.fbi.gov/about-us/cjis/nics/reports/2005-operations-report/ops_report_2005.pdf)).

In addition, the DENI Branch queries the daily NICS referrals to identify collateral (pre-pawn) checks where a person who attempted to pawn a firearm was found to be prohibited. Research by the DENI Branch that covered October 2001 to November 2005 concluded that collateral checks have a denial rate of 3.3%, which is over two times greater than the overall FBI denial rate. The pawnbroker who requested the collateral check is contacted to find out if the denied person left the pawnshop with the firearm. If the denied person still possesses the firearm, the referral is expedited in the same manner as a delayed denial. If the pawnbroker retained the firearm, the denial is processed as a standard denial.

The DENI Branch searches databases available to ATF for additional data on denied persons referred by the FBI. After an initial screening, denials are referred to the 19 ATF field divisions serviced by the DENI Branch (six other divisions' territories are only comprised of POC states). All delayed denials are required to be referred within 48 hours. Routinely, delayed denials are referred within 24 hours of receipt from the FBI. Referrals are made in accordance with criteria established for the federal judicial districts within each division's territory. ATF and United States Attorneys have developed referral criteria for all 94 judicial districts that reflect the types of cases most likely to merit prosecution. Cases involving restraining orders, domestic violence misdemeanors, non-immigrant aliens, violent felonies, warrants, and indictments are most often included in referral criteria.

The DENI Branch screened 76,142 NICS denials received from the FBI during 2010, and referred 4,732 denials (approximately 6%) within the established guidelines to field divisions. The referred cases were made up of 2,265 delayed denials (3% of all denials) and 2,467 standard denials (over 3%). The remaining denials (71,410, or nearly 94%) did not meet referral guidelines or were overturned or canceled. Overturns occurred after review by the DENI Branch or after the FBI received additional information. The FBI canceled a small number of denials in cases where a NICS check should not have been conducted. (Table 2.) Standard denials that are not being referred are reported weekly to the field divisions and made available in a database if further review is deemed necessary.

Denials that were caused by protective orders, felony convictions, and domestic violence misdemeanor convictions comprised nearly 76% of referrals to field divisions. (Table 2.) Somewhat less frequent were referrals involving persons who were an unlawful user of a controlled substance, under indictment or information, or a fugitive

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from justice. The six most common reasons for referral accounted for about 98% of the cases. (Appendix table B.)

**Table 2. NICS denials by FBI referred to ATF field divisions in 2010**

	Cases	Percent
FBI denials referred to ATF DENI Branch	76,142	100.0%
DENI Branch referrals to ATF field divisions	4,732	6.2%
Delayed denials	2,265	3.0%
Standard denials	2,467	3.2%
Not referred to field, overturned, or canceled	71,410	93.8%
Most common reasons for referrals to field		
Subject to protective order	1,395	29.5%
Convicted felon	1,144	24.2%
Domestic violence misdemeanor	1,049	22.2%

A NICS coordinator in each ATF division receives and distributes referrals to the appropriate field office. A state point of contact may also refer denials to the nearest field office. Special agents at the field offices verify conviction and prohibition information and conduct additional investigations. The FBI is notified if ATF determines that a person should not have been denied.

In a delayed denial case, the agent contacts the firearm purchaser and seizes or takes an abandonment of the firearm or coordinates a transfer of the firearm to a licensed dealer or to a third party who is not a prohibited person. In POC states, a retrieval may be handled by local law enforcement, a statewide firearms unit, or ATF. In addition to the delayed denials, a small number of 2010 standard denials potentially involved unlawful firearm possession. Field offices investigated a total of 1,923 unlawful possession cases that began in 2010. A retrieval of a firearm (or firearms) from a prohibited person by field agents occurred in 1,164 (about 61%) of the cases. The subject of the investigation was cleared in 509 cases (approximately 27%). About 93% of the cases had been resolved by December 13, 2010, with the subject missing in nearly 7% of the cases. (Table 3.)

**Table 3. Outcomes of 2010 unlawful possession cases**

	Cases	Percent
Total	1,923	100.0%
Retrieval of a firearm (or firearms)	1,164	60.5%
Subject not prohibited	509	26.5%
Unable to locate subject	128	6.7%
Other outcomes	122	6.3%

The 1,164 retrieval cases reached the following resolutions: transfers to non-prohibited third parties - 577 (30% of total cases); returns to firearms dealers - 505 (about 26%); seizures by ATF - 47 (over 2%); and abandonments by transferees - 35 (nearly 2%). These cases resulted in retrieval of 1,181 firearms. (Appendix table C.) Charges were



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referred for prosecution in 11 cases where ATF retrieved a firearm and in two cases that were given to local law enforcement.

### Prosecutions by U.S. Attorneys

When an investigation is complete, the field office and the U.S. Attorney decide whether the case merits prosecution. A case that is not deemed appropriate for federal prosecution may be referred to a state prosecutor. If the U.S. Attorney decides to prosecute, an arrest is made or a warrant is issued.

Field offices declined to refer 4,184 cases for prosecution. The most common reasons for declinations were no prosecutive merit (1,661 cases or almost 40%), federal or state guidelines were not met (1,092 cases or 26%), and subjects found to not be prohibited (480 cases or about 12%). (Table 4). Other reasons for declination by a field office included closure by a supervisor (457 or 11%) and no potential or unfounded (396 cases or about 10%). (Appendix table D.)

**Table 4. 2010 cases declined by ATF field offices**

	Cases	Percent
Total	4,184	100.0%
Most common reasons for declination		
No prosecutive merit	1,661	39.7%
Federal or state guidelines not met	1,092	26.1%
Not a prohibited person	480	11.5%

A total of 62 charges from the 2010 cases were referred by field offices for consideration by prosecutors. The most common charge referred was submitting falsified information when buying firearms, which accounted for 22 charges and 36% of all charges. The second and third most common charges were possession of a firearm by a convicted felon (11 charges or approximately 18%) and possession of a firearm after a domestic abuse charge (7 charges or about 11%). (Table 5.)

**Table 5. Charges referred for prosecution, 2010**

Charge definition	Charges	Percent
Total	62	100.0%
Falsified information when buying firearms	22	35.5%
Possession of firearm by convicted felon	11	17.7%
Possess firearm after domestic abuse charge	7	11.3%
Receive/ship/transport firearm after indictment	5	8.1%
Other charges	17	27.4%

Subsections of the Gun Control Act, 18 U.S.C. 922, were the basis for 49 charges (approximately 79% of all charges). The 2010 cases produced charges referred for prosecution against 33 persons, 25 from delayed denials and 8 from standard denials. (Appendix table E.)

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Of the 62 charges referred from the 2010 cases, 18 (29%) had been declined by a prosecutor as of December 13, 2011. A guilty plea was obtained on 13 charges (about 21%) and 10 charges (about 16%) were dismissed as part of a plea agreement. Twelve charges (approximately 19%) were still pending action by a prosecutor as of December 13, 2011. (Table 6.) In addition, five charges (8%) were dismissed prior to or after an indictment (Appendix table F).

**Table 6. Status of 2010 charges referred for prosecution**

Judicial status	Charges <sup>a</sup>	Percent
Total	62	100.0%
Selected outcomes:		
Declined by prosecutor	18	29.0%
Guilty plea by defendant	13	21.0%
Pending action by prosecutor	12	19.4%
Dismissed per plea agreement	10	16.1%

<sup>a</sup>As of December 13, 2011

Of the 13 charges that resulted in a guilty plea, six (about 46%) were for possession of a firearm by a convicted felon and two (over 15%) were for receiving, shipping, or transporting a firearm after an indictment (Table 7). State offenses accounted for three of the charges and the remainder were federal charges. Ten charges in the guilty pleas (nearly 77%) were based on subsections of the Gun Control Act. Of the 13 defendants who pled guilty, 11 were from delayed denial cases and two were from standard denial cases. (Appendix table G.)

**Table 7. 2010 charges that resulted in guilty pleas**

Charge definition	Charges	Percent
Total	13	100.0%
Possession of firearm by convicted felon	6	46.2%
Receive/ship/transport firearm after indictment	2	15.4%
Other charges	5	38.4%

### Federal Judicial District Summary

The District of Arizona had the highest number of unlawful possession investigations from the 2010 cases (154), followed by the Southern District of Texas (86). The District of Arizona had the most field office declinations (240), followed by the Eastern District of Kentucky (192). The highest number of charges referred for prosecution was in the Northern District of Indiana (12), which also had the most charges that resulted in a guilty plea (5). (Appendix table H.)

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### Comparisons With Prior Years, 2006-2010

Data on enforcement of the Brady Act is available for the five-year period from 2006 to 2010. Selected statistics from each year's cases are summarized in Appendix table I. FBI referrals of NICS denials to the DENI Branch decreased about 1%, from 77,233 in 2006 to 76,142 in 2010. The DENI Branch's referrals to ATF field divisions decreased nearly 50%, from 9,432 for 2006 to 4,732 for 2010. Unlawful possession investigations decreased by 26% from 2006 to 2010 and investigations that resulted in a firearm retrieval decreased by over 21%. The number of charges referred by field offices for prosecution fell by over 77%, from 273 for the 2006 cases to 62 for the 2010 cases. The number of charges that resulted in guilty pleas and verdicts fell by about 82%, from 73 for the 2006 cases to 13 for the 2010 cases. (Appendix table I). Citations to the prior years' reports are listed in the appendix table.

### State Investigations of Denied Persons, 2006-2010

As of December 31, 2010, 13 states maintained a full point of contact for the NICS and conducted background checks on all persons who applied to purchase a firearm from a licensed dealer. Eight states maintained a partial NICS point of contact and conducted checks on all persons who applied to purchase a handgun from a dealer (the FBI checked long gun purchasers in these states). See *Background Checks for Firearm Transfers, 2010* (publication pending). In addition, six states require an applicant for a purchase or a purchase permit to undergo a background check that does not access the NICS Index.

When a denied person is suspected of violating federal law, most state point-of-contact agencies refer the case to the nearest ATF field office. States differ as to how potential state law violations are investigated. In some states, the checking agency immediately notifies the police or sheriff's department that has jurisdiction over a denied person's residence or the gun shop where the transaction occurred. The local agency is then responsible for investigation and prosecution of the case. Other states have a unit with statewide jurisdiction that screens cases before deciding whether a referral should be made to a state police troop or local law enforcement. Data on denied person investigations from two states is available for the five-year period from 2006 to 2010.

**Pennsylvania.** The Pennsylvania State Police (PSP) Firearms Division is a NICS point of contact and conducts background checks on prospective firearm purchasers. PSP denials that involve federal prohibitions are referred to ATF. Cases with potential state law violations may be referred to PSP troops or local law enforcement. PSP denied 10,596 firearm transfers in 2010, an increase of almost 11% from the 9,535 denials issued in 2006. Denials referred for investigation increased about 55%, from 285 in 2006 to 441 in 2010. Apprehensions of wanted persons decreased from 119 in 2006 to 114 in 2010 (about 4%) and reported arrests increased from 194 in 2006 to 205 in

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2010 (about 6%). Convictions of denied persons decreased by over 25%, from 173 in 2006 to 129 in 2010. (Appendix table J.)

**Virginia.** The Virginia State Police (VSP) Firearms Transaction Center is a NICS point of contact and conducts background checks on prospective firearm purchasers. VSP reports denied persons with federal prohibitors to ATF. Potential state law violations are reviewed by VSP Troopers, who consult with Commonwealth Attorneys as part of their investigative process. VSP denied 2,999 firearm transfers in 2010, a 26% increase from the 2,380 denials issued in 2006. Denials referred for investigation decreased by approximately 6%, from 1,005 in 2006 to 942 in 2010. The number of reported arrests increased by about 16%, from 727 in 2006 to 846 in 2010. In addition, VSP investigations led to the apprehension of 65 wanted persons and the retrieval of 6 firearms from prohibited persons in 2010. (Appendix table K.)

### **Methodology**

The DENI Branch provided the Regional Justice Information Service (REJIS) with statistics on denied person cases received from the FBI's NICS Section and referred to ATF field offices after screening. The National Field Office Case Information System (NFOCIS) unit provided REJIS with records from ATF's case management system (NForce) on field office and U.S. Attorney processing. The records reflect activity up to December 13, 2011. Court decisions are included in the records but sentencing information was not available.

No personal identifiers were included in the records. Cases or charges could only be distinguished by NICS numbers. NICS numbers for the 2011 cases were compared to those for the 2010 cases and a small number of duplicate entries were deleted. In calculating the number of persons referred for prosecution and the number of persons convicted, it was assumed that each separate NICS number represented one person. However, it is possible that a person could have more than one NICS number.

### **Additional Contributors**

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## Appendix

**Table A. Background checks on firearm applicants processed by the FBI in 2010**

	FBI / NICS <sup>a</sup>	
	Number	Percent
Applications	6,037,394	
Denials / Denial rate	72,659	1.2%
Appeals / Appeal rate	16,513	22.7%
Appeals reversed / Reversal rate	3,491	21.1%
Reasons for denials:		
Felony indictment/conviction	34,459	47.4%
State law prohibition	7,666	10.6%
Domestic violence		
Misdemeanor conviction	4,475	6.2%
Restraining order	3,107	4.3%
Fugitive	13,862	19.1%
Illegal or non-immigrant alien	576	0.8%
Mental illness or disability	1,292	1.8%
Drug use or addiction	6,971	9.6%
Other prohibitions <sup>b</sup>	251	0.3%

-- Not applicable

<sup>a</sup>Firearm transfer transactions reported by the FBI NICS Section.

<sup>b</sup>Includes juveniles, persons dishonorably discharged from the Armed Services, persons who have renounced their U. S. citizenship, and other unspecified persons.

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**Table B. NICS denials by FBI referred to ATF field divisions in 2010**

	Cases	Percent
FBI denials referred to ATF DENI Branch	76,142	100.0%
DENI Branch referrals to ATF field divisions		
Total referred to field	4,732	6.2%
Delayed denials	2,265	3.0%
Standard denials	2,467	3.2%
Not referred to field	68,209	89.6%
Not referred and overturned	3,163	4.2%
Canceled	38	---
Reasons for referrals to ATF field divisions		
Subject to protective order	1,395	29.5%
Convicted felon	1,144	24.2%
Domestic violence misdemeanor	1,049	22.2%
Unlawful user of controlled substance	411	8.7%
Under indictment or information	344	7.3%
Fugitive from justice	286	6.0%
Adjudicated mentally defective	46	1.0%
Illegal or unlawful alien	36	0.8%
Other reasons <sup>a</sup>	21	0.4%

Note: Totals may not sum to 100% due to rounding.

<sup>a</sup>The category "other reasons" is compiled from four other prohibiting categories utilized by the DENI Branch to refer denials for field investigation.

**Table C. 2010 NICS denial cases involving unlawful firearm possession**

Outcome of ATF investigation	Delayed	Standard	All Cases	Percent
Total	1,858	65	1,923	100.0%
Retrieval of a firearm <sup>a</sup> by:				
Transfer to third party	573	4	577	30.0%
Return to firearms dealer	503	2	505	26.3%
Seizure by ATF	46	1	47	2.4%
Abandonment by transferee	35	0	35	1.8%
	1,157	7	1,164	60.5%
Subject not prohibited	498	11	509	26.5%
Unable to locate subject	128	0	128	6.7%
Firearm not transferred	43	46	89	4.6%
Given to local law enforcement	20	0	20	1.0%
Referred to other agency	12	1	13	0.7%

<sup>a</sup>A total of 1,181 firearms were retrieved by ATF, 1,174 from delayed denial cases and seven from standard denials cases.

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**Table D. 2010 NICS denial cases declined by ATF field offices**

Reason for case declination	Delayed	Standard	All cases	Percent
Total	2,063	2,121	4,184	100.0%
No prosecutive merit	748	913	1,661	39.7%
Federal or State guidelines not met	527	565	1,092	26.1%
Not a prohibited person	409	71	480	11.5%
Closed by supervisor	210	247	457	10.9%
No potential or unfounded	159	237	396	9.5%
Referred to another agency	6	85	91	2.2%
Assisted prosecution	4	3	7	0.2%

Note: The number of cases declined is obtained from NForce. On occasion, a field office will close a case initially transferred from the DENI Branch and open the case under a different number; therefore the number of prosecuted cases may seem low compared to the number of cases referred to the field.

**Table E. Charges in 2010 NICS denial cases referred for prosecution**

18 USC 922 Subsection		Charge definition	Delayed	Standard	All charges <sup>a</sup>	Percent
	Total <sup>b</sup>		49	13	62	100.0%
(a)(6)	Falsified information when buying firearms		15	7	22	35.5%
(g)(1)	Possession of firearm by convicted felon		8	3	11	17.7%
(g)(9)	Possession of firearm after domestic abuse charge		7	0	7	11.3%
(n)	Receive/ship/transport firearm after indictment		5	0	5	8.1%
(g)(3)	Possession of firearm by drug user		2	0	2	3.2%
(g)(8)	Possession of firearm while under restraining order		0	1	1	1.6%
Other			1	0	1	1.6%
	Total 18 USC 922		38	11	49	79.0%
	Other statutes <sup>c</sup>		11	2	13	21.0%

<sup>a</sup>Charges were referred against 33 persons, 25 from delayed denials and eight from standard denials.

<sup>b</sup>Seven charges were for State offenses; the remainder were Federal charges.

<sup>c</sup>Includes five charges for causing a firearms dealer to falsify records, 18 USC 924(a)(1)(A), one charge for making a false statement, 18 USC 1001, two state narcotics charges, and five charges based on unspecified state statutes.

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**Table F. Judicial status of charges in 2010 NICS denial cases referred for prosecution**

Judicial status (as of December 13, 2011)	Delayed	Standard	All charges	Percent
Total	49	13	62	100.0%
Declined by prosecutor	13	5	18	29.0%
Guilty plea by defendant	11	2	13	21.0%
Pending action by prosecutor	12	0	12	19.4%
Dismissed per plea agreement	9	1	10	16.1%
Complaint filed	2	2	4	6.5%
Dismissed prior to indictment	2	1	3	4.8%
Dismissed after indictment	0	2	2	3.2%

**Table G. Charges in guilty pleas and verdicts, 2010 NICS denial cases**

18 USC 922 Subsection	Charge definition	Delayed	Standard	All charges <sup>a</sup>	Percent
	Total <sup>b</sup>	11	2	13	100.0%
(g)(1)	Possession of firearm by convicted felon	4	2	6	46.2%
(n)	Receive/ship/transport firearm after indictment	2	0	2	15.4%
(a)(6)	Falsified information when buying firearms	1	0	1	7.7%
(g)(3)	Possession of firearm by drug user	1	0	1	7.7%
	Total 18 USC 922	8	2	10	76.9%
	Other statutes	3	0	3	23.1%

<sup>a</sup>13 defendants pled guilty, 11 from delayed denials and two from standard denials.

<sup>b</sup>Three charges were for State offenses; the remainder were Federal charges.



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**Table H. Federal judicial district summary, 2010 NICS denial cases**

Districts with the most unlawful possession cases

Arizona	154
Texas Southern	86
Georgia Northern	81
Missouri Western	80
Kansas	79

Districts with the most case declinations

Arizona	240
Kentucky Eastern	192
Kentucky Western	161
South Carolina	158
Missouri Western	152

Districts with the most charges referred for prosecution

Indiana Northern	12
Arizona	6
Indiana Southern	6
Georgia Middle	5
New York Northern	5

Districts with the most charges that resulted in a guilty plea

Indiana Northern	5
Indiana Southern	3
Arkansas Eastern	1
Georgia Middle	1
Kentucky Western	1
New York Northern	1
South Dakota	1

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**Table I. Selected statistics on NICS denial cases, 2006-2010**

	Number of Cases					Change
	2010	2009 <sup>a</sup>	2008 <sup>b</sup>	2007 <sup>c</sup>	2006 <sup>d</sup>	2006-2010
FBI denials referred to DENI Branch	76,142	71,010	78,906	73,992	77,233	-1.4%
DENI referrals to ATF field divisions	4,732	4,681	5,573	6,275	9,432	-49.8%
Unlawful possession investigations	1,923	2,063	2,154	2,212	2,600	-26.0%
Investigations with firearm retrieved	1,164	1,256	1,218	1,258	1,480	-21.4%
Field office declinations	4,184	4,726	6,086	6,072	9,410	-55.5%
	Number of Charges					Change
	2010	2009	2008	2007	2006	2006-2010
Referred for prosecution	62	140	147	196	273	-77.3%
Declined by prosecutor <sup>e</sup>	18	63	42	74	99	-81.8%
Guilty plea or verdict <sup>e</sup>	13	32	43	48	73	-82.2%

<sup>a</sup> *Enforcement of the Brady Act, 2009*, (NCJ No. 234173, April 2011), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=256112>

<sup>b</sup> *Enforcement of the Brady Act, 2008*, (NCJ No. 231052, June 2010), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=253101>

<sup>c</sup> *Enforcement of the Brady Act, 2007*, (NCJ No. 227604, July 2009), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=249609>

<sup>d</sup> *Enforcement of the Brady Act, 2006*, (NCJ No. 222474, April 2008), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=244375>

<sup>e</sup> Counts for each year may be undercounted because some cases were pending action by a prosecutor or a court on the date that data was extracted from ATF records (see yearly reports for details). Results of the pending cases are not available for any year.

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**Table J. Investigations of Pennsylvania POC Denial Cases, 2006-2010**

	2010	2009	2008	2007	2006	Change 2006-2010
Total denials	10,596	9,449	10,823	7,420	9,535	11.1%
Referred for investigation	441	328	504	440	285	54.7%
State police troops	382	222	294	300	175	118.3%
Local police departments <sup>a</sup>	59	96	90	139	102	-42.2%
ATF field offices	0	10	120	1	8	-100.0%
Investigation outcomes						
Firearms retrieved	---	---	---	---	---	---
Wanted persons apprehended	114	114	112	124	119	-4.2%
Arrests reported	205	215	96	252	194	5.7%
Prosecutor declinations	78	74	41	76	100	-22.0%
Convictions	129	151	69	181	173	-25.4%

---Not applicable or not available

Source: Pennsylvania State Police, Firearms Annual Reports, 2006-2010,  
<http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&PageID=462425&level=2&css=L2&mode=2>

<sup>a</sup>Pennsylvania cases were initially referred to state police troops and further referred to local police departments.

**Table K. Investigations of Virginia POC Denial Cases, 2006-2010**

	2010	2009	2008	2007	2006	Change 2006-2010
Total denials	2,999	3,101	2,777	2,222	2,380	26.0%
Referred for investigation	942	1,286	891	935	1,005	-6.3%
State police troops	942	1,286	891	935	1,005	-6.3%
Local police departments <sup>c</sup>	---	---	---	---	---	---
ATF field offices	---	---	---	---	---	---
Investigation outcomes						
Firearms retrieved <sup>a</sup>	6	6	11	5	---	---
Wanted persons apprehended	65	74	77	75	---	---
Arrests reported	846	930	810	716	727	16.4%
Prosecutor declinations	---	---	---	---	---	---
Convictions	---	---	---	---	---	---

---Not applicable or not available

<sup>a</sup>Includes firearms retrieved by the state police or returned voluntarily by a prohibited person.

Source: Virginia State Police.

## ADDITIONAL SUBMISSIONS FOR THE RECORD

A list of material and links can be found below for Submissions for the Record not printed due to voluminous nature, previously printed by an agency of the Federal Government, or other criteria determined by the Committee:

Nutter, Hon. Michael A., Mayor of Philadelphia, Pennsylvania, and President, The U.S. Conference of Mayors, Proposal for the Creation of the National Commission on Domestic Terrorism, Violence and Crime in America, proposal:

*<https://www.judiciary.senate.gov/imo/media/doc/Proposal%20for%20the%20Creation%20of%20the%20National%20Commission%20on%20Domestic%20Terrorism,%20Violence%20and%20Crime%20in%20America.pdf>*.

